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LITIGATIONS IN PUBLIC INTEREST: A COMPARATIVE STUDY OF PUBLIC INTEREST LITIGATION IN INDIA AND TUTELA IN COLOMBIA

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ABSTRACT:

In today's fast pacing world of constantly changing realities, an individual has to face many challenges while making a living. All kinds of divides have persisted in society for decades. These can be quickly addressed by constitutional means, such as the recently developed public interest litigations. Public interest litigation, as the name suggests, is litigation that is aimed at helping the ones who are unable to help themselves and stand on behalf of the ones who are unable to stand up for themselves. It is not a privately interested litigation but one that aims to act as a panacea for the population. Judicial interference by the way of PIL is not new or novel. It is an abstract idea turned into success through the efforts of many advocates and active litigants, but most of all-, the judiciary, which was at that time of independence, was meant to be bound by the strict procedures of the written law. Public interest litigations aid an individual and even the judiciary to look into the issues ranging from poverty to privacy, depending upon the jurisdiction and the circumstances persisting in each nation. The present article deals extensively with the concept of public interest litigations in India and tutela in Colombia, a form of public interest litigation only. Lastly, this paper strives to highlight the similarities and dissimilarities between the two to further study in comparative public law.

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"*Our adjectival branch of jurisprudence, by and large, deals not with the sophisticated litigants but the rural poor, the urban lay, and the weaker societal segments for whom law will be added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause title create a secret weapon to non-suit a part. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. Less litigation, consistent with the fair process, is the aim of adjective law."*[2]

-Janata Dal v H.S. Chowdhury AIR 1993 SC (892)

INTRODUCTION

Public interest litigation, as the name suggests, is litigation that is aimed at helping the ones who are unable to help themselves and stand on behalf of the ones who are unable to stand up for themselves. It is not a privately interested litigation but one that aims to act as a panacea for the population for which it is filed. Judicial interference by the way of PIL is not new or novel. It is an abstract idea turned into success through the efforts of many advocates active litigants, but most of all the judiciary, which was at that time of independence, meant to be bound by the strict procedures of the written law. Former Supreme Court Justices- Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were the ones to herald in a new era of litigation in India. This took the form of PIL and henceforth was lauded by various nations. Till then, the Indian Judiciary was lamented worldwide for following a *silos approach*, i.e., reading a specific provision of law in isolation of the other provisions. But, as is understood, how far could have this approach been beneficial for the legal profession or the judiciary itself. Therefore, slowly but steadily- the courts responded in positive and shunted out a misconception- that the courts are meant for the rich and panchayats for the poor. Change ushered and transformed the whole adversarial litigation scenario. Each and every person, be it a legally sound one or not, welcomed the change. The Public Interest Litigations have a contemporary in Colombia as well and the developmental story there is also to watch for. The objective of this paper is to bring in focus a comparative analysis between the two nations with regard to their proactive judicial approach.

The Centre for Public Interest Law set up by the Ford Foundation in the USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976, as follows, "Public Interest Law is the name that has been given to efforts that provide legal representation to

[2]Janata Dal v H.S. Chowdhury, AIR 1993 SC 892.

previously unrepresented groups and interest. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities, and others."[3]

The expression litigation, very simply means a legal action that is taken by the litigant in the court of law and the end result of which is a judgment. This is an action that is taken to remedy a legally wrong situation persisting, which invariably results in redressal of grievances of the aggrieved. Lexically speaking, the expression "PIL" means a legal action initiated in the Court of law for the enforcement of public interest or general interest in which the public or a class of community have pecuniary interest or some interest which by which their legal rights or liabilities are affected.[4] A number of judicial decisions explaining the expression PIL are present in the present-day context.

There are various matters elucidated over the years[5] in which PILs are allowed and these are briefly listed below:

1. Bonded labour and neglected children matter.
2. Non-Payment of minimum wages to workers and exploitation of casual workers.
3. Petitions from jails complaining harassment, for premature release and seeking release on bail.
4. Petitions against atrocities on women, dowry deaths and other matters connected and incidental thereto.
5. Petitions in cases of Scheduled Castes and Scheduled Tribes.
6. Family pensions- landlord and tenant matters.
7. Admissions to medical colleges and petitions for early hearing in urgent matters.
8. Complaints against central and other departments.

The origin of Public Interest Litigation can be traced back to the jurisdictions of USA[6] and Canada, where institutions went through manifold changes and these modifications bought in

[3] Dr. B. Singh v Union of India 2004 (3) SCC 363.
[4] Dr. Ambedkar Basti Vikas Sabha v Delhi Vidyut Board, AIR 2001 Del 223.
[5] Sachidanand Pandey v State of West Bengal AIR 1987 SC 1109; Kazi Landup Dorji v Central Bureau of Investigation 1994 9Supp.) 2 SCC 116; Veena Sethi v State of Bihar AIR 1983 SC 339; S.P. Anand v Deve Gowda AIR 1997 SC 272; R.K. Jain v Union of India AIR 1993 SC 1769; Jasbhai Motibhai Desai v Roshan Kumar Haji Bashir Ahmed AIR 1976 SC 578; All India Institute of Medical Sciences Registered Society v Union of India 1996 (11) SCC 582; Ashok Lanka v Rishi Dixit 2005 (5) SCC 598; K.K. Bhalla v State of Madhya Pradesh 2006 (1 SCALE) 238.
[6] P.M. BAKSHI, PUBLIC INTEREST LITIGATION, 3rd Ed., 2012.

an era of proactive judiciary with highly recognized rights of the people. This snowballed into a worldly phenomenon whereby other jurisdictions also picked up this wave of justice. Various legal aid clinics across the jurisdictions of Australia and Canada have also identified the rights of the underprivileged.

This in turn also prompted the Indian Judiciary to work for the downtrodden and the destitute, including others. But the Indian growth story with regard to public interest has been a different one because the conditions prevailing in India are quite different than the other nations. In India, the judiciary did not pounce to recognize right to privacy or such penumbral rights, but first went on to address the rights that are actually given in the Constitution. These include the very fundamental rights such as right to have a shelter, right to be treated equally, right to absence of discrimination, amongst others. This makes the Indian journey of public interest litigations a unique one, guided by strong judicial instincts as to what is the most important agenda and right that has to be addressed. The seed therefore, in India, of the public interest litigations was sown by the judges and the judiciary.

In the case of Mumbai Kamgar Sabha v Abdulbhai[7], while laying down the seeds of public interest litigations in India, Justice V.R. Krishna Iyer proclaimed-

"Our adjectival branch of jurisprudence, by and large, deals not with sophisticate litigants but the rural poor, urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit apart. Where foul play is absent, and fairness is not faulted, latitude is the grace of processual justice."[8]

In Fertiliser Corporation Kamgar Union v Union of India[9], Justice Krishna Iyer once again propounded on the meaning of the phrase and explained the meaning of epistolary jurisdiction. Public interest litigation is a weapon that has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social

[7] Mumbai Kamgar Sabha v Abdulbhai, AIR 1976 SC 1455
[8] Janata Dal v H.S. Chowdhury, AIR 1993 SC 892.
[9] Fertiliser Corporation Kamgar Union v Union of India (1981) SC 344; S.P Gupta v Union of India AIR 1982 SC 149.

justice to the citizens. The attractive brand name of public interest litigation must not be used for suspicious products of mischief.[10]

In Black's Law Dictionary (Sixth Edition), public interest is explained as follows-

"Public interest is something in which the public, or some interest by which their legal rights and liabilities are affected. It does not mean anything about the particular localities which may be affected by matters in question."

In Babu Ram v State of UP, it has been declared that, "Public interest means an act beneficial to the general public. It means action necessarily taken for public purpose. Requirements of public interest vary from case to case."[11]

Thus, the arena of public interest litigation is very wide and hence the following papers seeks to address the same.

SCOPE OF LOCUS STANDI VIS-À-VIS PUBLIC INTEREST LITIGATION

Locus standi is a concept in which only the aggrieved party has the right to institute a suit if any thing wrong has been committed against it. It is a very restrictive concept of legal practice in which the destitute or the needy cannot institute a suit if a legal wrong has been committed against the whole class. In the landmark case of S.S. Rao v Union of India, the Bench comprising Justice U.C. Banerjee and Justice P.R. Raju have explained the concept of locus standi-

"The concept of locus standi has had a steady refinement by the law Courts over the years. With the changing stricture of the society and complexities in life, mere was matter of fact an ardent effort on the part of the judiciary to liberalize the concept of locus standi. In the wake of the 21st Century, probably a rigid insistence on the strict rules of the concept of the locus standi cannot but be termed to be opposed to the present-day concept of justice."[12]

In the Legal Control of Government, Schwartz and HWR Wade have written that, "Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away merely because he is not sufficiently affected personally, that means that some Government agency is left free to violate the law, which is contrary to the public interest. Litigants are unlikely to expend their time and money

[10] Dr. Ambedkar Basti Vikas Sabha v Delhi Vidyut Board AIR 2001 Del 223.
[11] Babu Ram Verma v State of UP (1971) All LJ 653.
[12] S.S. Rao v Union of India 1998 (6) ALD 389.

unless they have some real interest. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged? The right of effective access to justice has emerged with the new social rights."[13]

The Bench quoted the S.P. Gupta v Union of India judgement in the following way, "Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies to provide access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who because of their poverty or socially economically disadvantaged position arc unable to approach the Court for relief. In this spirit, the Court has been entertaining letters for judicial redress and treating them as writ petitions, and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach."[14]

Thus, locus standi, being a very obsolete concept is highly disregarded now a days in judicial decisions. However, the presence of locus standi was necessary to gradually grow towards the concept of public interest litigation. Therefore, it is utmost inevitable to understand the same. The right to have a standing in front of the Court is recognised under the Universal Declaration of Human Rights 1948, of which India is also a signatory. Thus, keeping in line with the international commitments', public interest litigation was started. Locus standi is a Latin concept which means "the right to take a stand in court." Strict rules of Locus Standi were enumerated and discarded in various judgments such as Subhash Kumar v State of Bihar[15], Janata Dal v HS Chowdhury[16], Sheela Barse v Union of India[17] and S.P Gupta v Union of India.[18] The subjugation of locus standi led to the concept of Public Interest Litigation. The transformation from a silos approach to an anti-silos approach was a slow but a steady one.

[13] *Id.*
[14] S.P. Gupta v Union of India AIR 1982 SC 149.
[15] Subhash Kumar v State of Bihar 1991 AIR 420
[16] Janata Dal v H.S. Chowdhury, AIR 1993 SC 892.
[17] Sheela Barse v Union of India JT 1986, 136.
[18] S.P. Gupta v Union of India AIR 1982 SC 149.

In the case of Sachidanand Pandey v State of West Bengal, the free flow of frivolous litigations was sought to be curbed in the name of public interest litigation. The Court observed, "If courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the under-dog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restrain of public interest litigants."[19]

In the landmark case of Jasbhai Motibhai Desai v Roshan Kumar Haji Bashir Ahmed, the Court gave the definition of aggrieved person as,

"Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of rigid, exact, and comprehensive definition. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction."[20] The Court in this case took a very broad and expansive definition of aggrieved persons that can help the ones who cannot approach the Court.

In Dr. BK Subbarao v Mr. K. Prasanna[21], the Court said that frivolous, vexatious, motive mongers should not be allowed to file a public interest litigation, and still if they do, the Courts must be active enough to throw these petitions out, after due care and consideration.

Therefore, the judiciary has played a very active role in the field of public interest litigation and the concept has been welcomed by the legal fraternity with open hands. In various

[19] Sachidanand Pandey v State of West Bengal AIR 1987 SC 1109.
[20] Jasbhai Motibhai Desai v Roshan Kumar Haji Bashir Ahmed AIR 1976 SC 578.
[21] DR. BK Subbarao v Mr. K Prasanna 1996 (7) JT 265.

judgments, the court has been proactive even in saying that frivolous complaints are not to be entertained, whereas the bonafide ones, even if they are epistolary or not filed in the right format, should be accepted in each and every manner.

PHASES OF PUBLIC INTEREST LITIGATION DEVELOPMENT IN INDIA

Public interest litigation, as a concept as has been defined earlier is an example of an active, informed, and attentive judiciary. A judiciary, that is playing its envisaged role is the only one that can give rise to such public centric concepts. The envisaged role of the judiciary is bringing in a social transformation, through legally and constitutionally valid means, in line with the written law. The introduction of public interest litigations and the rise in the litigations over the years is an example of living constitutionalism. Living Constitutionalism is nothing but a theoretical concept that supports metamorphosising the constitutional ideals in an amendment-less way. This means that without any amendment in the Constitution, new concepts can be added that support the growing dynamism in the society and makes the law abreast with the changing nature of societal morality. In the same go, the constitutional morality is also transformed, and the law lives up to the dreams of its original makers by being applied in both legal and spiritual manner.

Public interest litigations are remedial, representative, citizen-centric and they are meant to be non-adversarial as well as they relax the concept of locus standi. They are not meant to make the whole litigation process tedious but make it as simple as possible. In the words of Justice Krishna Iyer, "Judicial activism in the form of Public interest litigation gets its highest bonus when its orders wipe tears from some eyes."[22] In the case of Guruvayur devaswom Managing Committee v C.K. Rajan and Others, the scope of public interest litigations in the matters of temple management was considered. The court, with specific regard to the concept of public interest litigations observed that,

"The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render

[22] P.M. BAKSHI, PUBLIC INTEREST LITIGATION, 3rd Ed., 2012.

complete justice to the aforementioned classes of persons. It expanded its wings in course of time."[23]

In Indian Banks Association Bombay & Others v Devkala Consultancy Service and Others has defined the concept of public interest litigation vis-à-vis Article 32 and 226 as well as the pro bono litigations. The Court opined,

"Pro bono publico constituted a significant state in the present-day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay, and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice. Furthermore, even where a writ petition has been held to be not entertainable on the ground or otherwise of lack of locus, the court in larger public interest has entertained a writ petition. (See Shivaji Rao Nilangekar Patil v. Mahesh Madhav Gosavi AIR 1987 SC 294)."[24]

In another case of Citizens for Democracy v Assam, handcuffing was discarded for the prisoners and the petition was treated as a public interest litigation. The Court explained the mental deterioration and the physical strains that fetters produce. The Court explained,

"Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, 'his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us."[25]

In the Centre for Enquiry into Health and Allied Themes (CEHAT) v Union of India, the petition was treated as a public interest litigation and the practice of pre-natal sex diagnosis

[23] Guruvayur Devaswom Managing Committee v CK Rajan (2003).
[24] Indian Banks Association Bombay & Others v Devkala Consultancy Service and Others 2004.
[25] Citizens for Democracy v State of Assam (1995).

was made punishable and discarded as inhuman. The Court directed the Central Government and the State Governments to implement the PCPNDT Act fully and prosecute the offenders in the right way. The Court said,

"It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Hence, the petitioners are required to approach this Court under Article 32 of the Constitution of India."[26]

In the Bandhua Mukti Morcha v Union of India, the apex Court highlighted the plight of bonded labourers and thus explained the very nature of public interest litigation. It stated that,

"Public interest litigation in its present form constitutes a new chapter in our judicial system. It has acquired a significant degree of importance in the jurisprudence practised by our courts and has evoked a lively, if somewhat controversial, response in legal circles, in the media and among the general public. In the United States, it is the name "given to efforts to provide legal representation to groups and interests that have been unrepresented or under-represented in the legal process. These include not only the poor and the disadvantaged but ordinary citizens who, because they cannot afford lawyers to represent them, have lacked access to courts, administrative agencies and other legal forums in which basic policy decisions affecting their interests are made".(1) In our own country, this new class of litigation is justified by its protagonists on the basis generally of vast areas in our population of illiteracy and poverty, of social and economic backwardness, and of an insufficient awareness and appreciation of individual and collective rights. New slogans fill the air, and new phrases have entered the legal dictionary, and we hear of the "justicing system" being galvanized into supplying justice to the socioeconomic disadvantaged. These urges are responsible for the birth of new judicial concepts and the expanding horizon of juridical power. They claim to represent an increasing emphasis on social welfare and a progressive humanitarianism."[27]

[26] Centre for Enquiry into Health and Allied Themes (CEHAT) v Union of India, 2001.
[27] Bandhua Mukti Morcha v Union of India 1984 AIR 802.

Therefore, the ambit of public interest litigation has widened because of the active approach of the judiciary of India but the road to equal development is still a far cry. However, the concept of judicial activism when blended with public interest litigation gives a beautiful bond that promises justice for all and equity more than anything else for each and every person in the territory of India.

TUTELA OF COLOMBIA

"I find that in Colombia, understanding of law and the state encourage the use of the tutela procedure, not due to the realizable promise of the state to protect rights or the majestic powers of the law, but because the tutelas offers one possible ray of hope in an otherwise limited choice set. The tutela is understood to be the only mechanism through which citizens can access their rights- the goods that they absolutely need or that have been constitutionally promised to them. In other words, there is no other alternative." [28]

WHITNEY K. TAYLOR

Colombia, a South American country is marred by social dislocation and poverty due to continued presence of civil conflicts, drugs such as cocaine and existence of guerrillas and paramilitaries apart from formal political institutions**.** Colombia has one of the highest levels of poverty, income inequality and labour market informality in Latin America. Despite a strong crisis response, social benefits do little to alleviate inequalities, and most social spending goes to the non-poor, particularly in the case of pensions.[29]

In 1991, a reform movement led to the replacement of 1886 constitution in Colombia. Now the country is governed by the constitution of 1991 which is also regarded as the 'Human Rights Constitution'. The Colombian constitution(1991) propounded three mechanisms for protecting individual's constitutional rights: -

1.Tutelas

2. the Defensor del Pueblo, a Human Rights Ombudsman; and

3. class actions to protect collective interests and rights of the individuals.

Tutela has its origin in the Colombian constitution of 1991 and is an easily accessible and quickly resolvable writ for the protection of Constitutionally guaranteed fundamental rights in Colombia. Article 86 Colombian Constitution(1991) lays down " Every individual may claim legal protection before the judge, at any time or place, through a preferential and

[28] Whitney K. Taylor, *Ambivalent Legal Mobilization: Perceptions of Justice and the Use of the Tutela in Colombia*, 52 Law & Soc'y Rev. , 337, 341 (2018), http://www.jstor.org/stable/45093912.

[29] OECD Economic Surveys:2022, https://www.oecd.org/cfe/smes/Colombia.pdf (10th August 2023).

summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority".[30] Tutelas are petitions that allow an individual citizen to demand suspension of any action or omission of a governmental or private entity that threatens a fundamental right.[31] Tutelas can be filed in any court in Colombia and can be filed by the person affected or any person acting on behalf of the person so affected in an informal way either orally or in handwritten form.

ROLE OF TUTELA IN EVOLUTION OF DEMOCRACY IN COLOMBIA

Colombia is under severe political instability. The 2016 peace accord between the Revolutionary Armed Forces of Colombia (FARC) and the government ended a five-decade-long conflict and brought an initial decline in violence. But violence took new forms and abuses by armed groups increased in many remote areas in later years, reaching similar levels in 2022 to those that existed immediately before the peace process.[32] Abuses by armed groups, limited access to justice, and high levels of poverty, especially among Indigenous and Afro-descendant communities, remain serious human rights concerns in Colombia.[33]

Tutela plays a key central role in the administration of justice in Colombia as it empowers citizens to embrace their fundamental rights, extends reach of legal organs in the society and breaks the barrier of restricted access to justice among people due to reasons such as illiteracy, cultural differences and geographical gaps.

In one of the tutela ruling T- 002of 1992[34], the court widened its scope of jurisdiction when it was deliberating on a criteria for when a right will be of a fundamental character and can be petitioned by a tutela. The Constitutional court in this case has decided that " such criteria are met if the right in question is protected in an international human rights treaty."[35] Therefore, not only does it widened the jurisdiction of courts for tutelas but it also aligned the idea of a democratic Colombian nation with that of International Human rights standards.

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[30] Constitute Project, https://www.constituteproject.org/constitution/Colombia_2015 (27th July2023).
[31] Chris Thornhill & Carina Rodrigues de Araújo Calabria, *Global Constitutionalism and Democracy: the case of Colombia*, Springer (5th August 2023, 10:00 AM), https://link.springer.com/article/10.1007/s42439-020-00024-z.
[32] Human Rights Watch, https://www.hrw.org/world-report/2023/country-chapters/colombia (25th July 2023).
[33] *Id.*
[34] Corte Constitucional [C.C.] [Constitutional Court], 8 de mayo de 1992, J. Alejandro Martinez Caballero, Sentencia T - 002/92, (Colom.), http://www.ramajudicial.gov.co.
[35] L Chris Thornhill & Carina Rodrigues de Araújo Calabria, *Global Constitutionalism and Democracy: the case of Colombia*, Springer (5th August 2023, 10:00 AM), https://link.springer.com/article/10.1007/s42439-020-00024-z.

The Constitutional Court gave strongest expression to this state-building strategy in its most important tutela ruling, T-025/04[36] dealing with the review of tutela action filed by 1150 groups of displaced families. In this judgement the Constitutional Court identified the State's structural crisis which led to the failure of the state to address the problems of displaced population and embraced a concrete stand by authorising itself to prescribe remedies to public agencies to mitigate their failures pertaining to fundamental rights violations. As regard to the locus standi of association representing displaced members to represent the displaced population the court laid down following conditions for associations:-

(1) that it is their legal representative who does so, duly proving their existence and representation during the tutela proceedings; (2) that the names of the members of the association in favour of which the tutela action is filed are duly individualized, through a list or a written document; and (3) that the evidence contained in the process does not allow inference of the fact that the displaced person does not want a tutela action to be filed on his or her behalf. (…)[37]

Tutela in Colombia are not only a measure to enact prohibitions and limitations on the powers of the state but they lay a broader goal of embracing a diverse social and political life inclusively. In the decision of tutela ruling T-411 of 1992[38] it stated " the Constitution provides elements of an economic constitution, based in 'property, labour, enterprise', which establishes elements of a 'social constitution', and it sets out principles for an ecological and a cultural constitution."[39]

With advent of 1990s, the constitution of Colombia with the aid of tutelas transformed the health system in the nation. Though Article 49 of the Colombian constitution(1991) laid down an obligation to organize, direct and regulate the delivery of health services by measures such as policies for the provisioning of health services by private entities, sharing of responsibilities by individuals and territorial entities, free of cost basic health care services and oversight and regulatory control, but it did not laid down for a fundamental right to

[36]Chris Thornhill & Carina Rodrigues de Araújo Calabria, *Global Constitutionalism and Democracy: the case of Colombia*, Springer (5th August 2023, 10:00 AM), https://link.springer.com/article/10.1007/s42439-020-00024-z.

[37]*Id.*

[38] Corte Constitucional [C.C.] [Constitutional Court], 8 de junio de 1992, J.Alejandro Martinez Caballero, Sentencia T – 411/92, (Colom.), http://www.ramajudicial.gov.co.

[39] Chris Thornhill & Carina Rodrigues de Araújo Calabria, *Global Constitutionalism and Democracy: the case of Colombia*, Springer (5th August 2023, 10:00 AM), https://link.springer.com/article/10.1007/s42439-020-00024-z.

health enforceable by tutela. In the tutela ruling T-597 of 1993[40], the Constitutional court adjudicated that state agencies are obliged to provide for healthcare but it did not establish for a right to health directly. However, it was promoted that healthcare rights are enforceable via tutelas if they are connected with an already fundamental right such as Right to life. Hence a principle of connectedness was propounded in which healthcare rights were protected if they were in an 'intimate and ineradicable relation' with other fundamental rights. Ultimately in the decision T–760/2008[41] the Constitutional Court intensified its protection of health rights to declare right to health as a fundamental right. The court passed a judgement to restructure the benefit plans and directed the National Commission for Health Regulation to immediately and on an annual basis comprehensively update the benefits included in the POS(Plan Obligatorio de Salud) or POSS (Plan Obligatorio de Salud Subsidiado) through a process that includes "direct and effective participation of the medical community and the users of the health system"[42].

Therefore, the tutelas in Colombia have empowered the courts to venture deep into structural crisis affecting healthcare system. With such empowerment, the courts have given reliefs by examining health policies and regulations or where provisions of care are not included in the POS/POSS, a government Solidarity and Guarantee Fund FOSYGA (Fondo de Solidaridad y Garantía) is required to reimburse the provider for expenses incurred, enforced access to HIV/AIDS medication, vaccination campaigns for poor children, extension of medical coverage under prepaid health plans, modification of the POS to include viral load tests for HIV and granting interim relief to assure access to care in emergency situations etc.

Though, just like health rights the Colombian constitution had several provisions for environment but it lacked the status of justiciable guarantees for the rights for the protection of the environment. Later, it also started to address environmental rights such as Right to a healthy environment with the aid of tutelas by embracing the principle of connectedness to other fundamental rights such as right to life and health. Eventually with the ruling of C-431 of 2000[43] it was established that environmental rights were of 'fundamental nature'. Also,

[40] Corte Constitucional [C.C.] [Constitutional Court], 7 de junio de 2001, J. Dr. Eduardo Cifuentes Munoz, Sentencia T – 597/93, (Colom.), http://www.ramajudicial.gov.co.

[41] Corte Constitucional [C.C.] [Constitutional Court], Second Review Chamber, 31 de Julio de 2008, J. Manuel José Cepeda Espinosa, Sentencia T - 760/08, (Colom.), http://www.ramajudicial.gov.co.

[42] *Id.*

[43] Corte Constitucional [C.C.] [Constitutional Court],12 de abril de 2000, Sentencia C – 431/00, (Colom.), http://www.ramajudicial.gov.co.

environmental rights were also termed as rights of 'constitutional rank' by T-760 of 2007[44]. The supreme Court of justice on April 5 , 2018 ruled on a tutela petition of 25 children and youth claiming that the deforestation in the Amazon and the increase of the average temperature in the country threatens their rights to a healthy environment, life, health, food, and water. The Supreme Court granted the plaintiffs' petition and ordered the Presidency and the Ministries of Environment and Agriculture to create an "intergenerational pact for the life of the Colombian Amazon," with the participation of the plaintiffs, affected communities, and research and scientific organizations, in order to reduce deforestation to zero and mitigate greenhouse gas emissions.[45] Also, the court recognised the Colombian Amazon as an "entity subject of rights," on similar lines with that of Atrato River. With this it established the duty of the State to protect, conserve, maintain, and restore the forest.

Similarly, Right to education was not a constitutionally guaranteed right by the Constitution of Colombia in 1991. But by the tutela ruling T–406 of 1992[46] it settled the position of Right to education as a right of 'fundamental quality' and hence securable through tutela.

Therefore one can conclude that tutelas have been a harbinger of Rule of law in Colombia amid the state of chaos.

A COMPARATIVE ANALYSIS OF PUBLIC INTEREST LITIGATION IN INDIA AND TUTELA IN COLOMBIA

A statistical analysis of both tutelas in Colombia and Public interest litigations in India signifies that both these measures are widely used by people to access justice. According to official data, more than 7 million tutelas were submitted between 1992 and 2018 in Colombia.[47] More than 80% of the Colombians are aware of the existence of tutelas, whereas only 20–25% of people are aware of other instruments for collective litigation.[48] Similarly in

[44] Corte Constitucional [C.C.] [Constitutional Court], J. Dra. Clara Ines Vargas Hernandaz, 25 de septiembre de 2000, Sentencia T -760/07, (Colom.), http://www.ramajudicial.gov.co.

[45] Desjusticia, *In historic ruling, Colombian Court protects youth suing the national government for failing to curb deforestation,* Desjusticia (5th April 2018), https://www.dejusticia.org/en/en-fallo-historico-corte-suprema-concede-tutela-de-cambio-climatico-y-generaciones-futuras/ .

[46] Corte Constitucional [C.C.] [Constitutional Court], 5 de junio de 1992, J. Ciro Angarita Baron, Sentencia T – 406/92, (Colom.), http://www.ramajudicial.gov.co.

[47] Dedensoria, https://www.defensoria.gov.co/ (1st August 2023).

[48] Chris Thornhill & Carina Rodrigues de Araújo Calabria, *Global Constitutionalism and Democracy: the case of Colombia*, Springer (5th August 2023, 10:00 AM), https://link.springer.com/article/10.1007/s42439-020-00024-z.

India, A total of 9,23,277 PILs were filed at the Supreme Court between 1985 and 2019.[49] On an average it can be said that every year the Court received 26,379 PILs. Though PILs and tutelas have been a key components of legal justice systems , they have their own contrasts and shades with respect to each other according to the political, cultural and social values.

Firstly, the PIL in India is an judicial innovation to protect public interests. Initially it was given impetus by Justice V R Krishna Iyer and Justice P N Bhagwati. PIL means a legal action initiated in the Court of law for the enforcement of public interest or general interest in which the public or a class of community have pecuniary interest or some interest which by which their legal rights or liabilities are affected.[50] The first PIL was filed in the case of Hussainara Khatoon v State Of Bihar[51]. This PIL sought justice for under trial prisoners in Bihar who had remained in jail awaiting trial for a longer period of time than they would have been sentenced to if found guilty.[52] On the contrary, tutelas in Colombia are constitutional in origin via Article 86 of the Colombian Constitution(1991). Tutelas are petitions that allow an individual citizen to demand suspension of any action or omission of a governmental or private entity that threatens a fundamental right.[53]

Secondly, PILs are filed in issues which have the nature of public interest. No petition involving individual/personal will be admitted as PIL unless that individual matters so filed will serve a greater purpose of promoting the public interest such as issues addressing bonded labour, neglected children, speedy trials etc. In comparison to this, Tutelas are filed both for private and public interests. The mechanism of tutelas is that an individual or anyone acting on his/her behalf can file an tutela for protecting his/her fundamental constitutional rights in any court in the country. The Constitutional court in Colombia reviews tutelas. In many of its decisions regarding tutelas, it has collectivised several tutelas relating to private interests and ruled several rights such right to health, right to protection of environment etc. in broader public interests as rights of fundamental nature and hence, petitions that commenced as

[49] Ayushi Saraogi & Gauri Kashyap, *On an Average, the Court Receives over 25,000 PILs a Year*, Supreme Court Observer (22nd July 2021), https://www.scobserver.in/journal/on-an-average-the-court-receives-over-25000-pils-a-year/.

[50] Dr. Ambedkar Basti Vikas Sabha v Delhi Vidyut Board, AIR 2001 Del 223.

[51] Hussainara khatoon v State Of Bihar 1979 AIR 1369.

[52]Ayushi Saraogi & Gauri Kashyap, *On an Average, the Court Receives over 25,000 PILs a Year*, Supreme Court Observer (22nd July 2021), https://www.scobserver.in/journal/on-an-average-the-court-receives-over-25000-pils-a-year/.

[53] Chris Thornhill & Carina Rodrigues de Araújo Calabria, *Global Constitutionalism and Democracy: the case of Colombia*, Springer (5th August 2023, 10:00 AM), https://link.springer.com/article/10.1007/s42439-020-00024-z.

private interests fructified into public interests. In India, on other hand in order to protect one's private interest in fundamental right writ petitions such as Habeas Corpus, mandamus, certiorari, quo warranto, prohibition can be filed under Article 32 and Article 226 of constitution of India, 1950.

Thirdly, PILs can be filed either formally or informally, orally or in letter form. There is no strict procedure to file a PIL as these have been created as a relief against the strict procedural compliances which cause deprivation of access to justice among the disadvantaged section of the society. The PILs are filed under Article 32 and Article 226 of the Constitution of India, 1950 in High Courts and Supreme courts. Also, the High Courts and Supreme Court can suo moto admit a PIL for protecting public interest. No district court is authorised to hear the PIL, nor can anybody approach the local court to hear it.[54] In contrast to this, the tutelas in Colombia can be filed in any local courts. The Constitutional Court of Colombia is the avant-garde guardian of the fundamental rights of the people, employing the optional review of judicial decisions concerning the protection of their constitutional rights petitioned, throughout the country, through guardianship action, also called the Amparo or Tutela action.[55] Tutelas can also be filed either formally or informally in handwritten form or in some cases verbally with or without the aid of a lawyer to any court with the jurisdiction of the dispute. Suo moto filing of tutelas by courts is not observed.

Fourthly, the subject matter of tutelas are not exhaustive. They only are accessible for protecting fundamental constitutional rights. The Constitutional court though have made an effort to tweak this criteria by protecting those rights also which have an intimate connection with the constitutionally protected rights. Also, by Article 93 of Colombian constitution(1991), International treaties and agreements ratified by Congress that recognize human rights also have the status of constitutionally protected rights in Colombia similar to domestic rights and can be petitioned via tutelas. The PILs in India have a wider ambit and Supreme Court and High courts can deal with a wider pool of public issues which have not been mentioned by the constitution as a protected fundamental right. This makes the Indian journey of public interest litigations a unique one, guided by strong judicial instincts as to what is the most important agenda and right that has to be addressed, evolved and embraced with the changing dynamics of the time.

[54] Prabhakar Kulkarni, *District courts must be empowered to hear PILs*, Telegraph India (26th November, 2018), https://www.telegraphindia.com/opinion/the-rule-that-a-pil-can-only-be-heard-in-high-courts-or-the-supreme-court-ends-up-denying-justice-to-the-poor/cid/1676495.

[55] Corte Constitucional de Colombia, https://www.corteconstitucional.gov.co/english/ (30th July 2023).

Fifthly ,The locus standi in case of PILs is more relaxed than in tutelas. PILs in India can be filed by anyone say individuals, a group of individuals, associations etc. with or without the aid of lawyers provided that in case of private individuals who do not have a direct concern with the cause filed, it should not be frivolous, vexatious, solely for personal gain or to settle scores. In tutelas, in light of Article 86 of Colombian constitution(1991), the tutelas can be filed by individual aggrieved with or without the aid of lawyers. Any other individual can also file on his/her behalf when they cannot protect themselves. But in respect of members of a association filing for the aggrieved, tutelas are restricted and criteria is laid such as (1) that it is their legal representative who does so, duly proving their existence and representation during the tutela proceedings; (2) that the names of the members of the association in favour of which the tutela action is filed are duly individualized, through a list or a written document; and (3) that the evidence contained in the process does not allow inference of the fact that the displaced person does not want a tutela action to be filed on his or her behalf. (…)[56]. Any individual who has no interest or connection with the cause filed in tutela hardly can petition tutela and has to resort to other legal mechanisms.

Sixthly, PILs in India can be filed both against private and public bodies and there is no time frame within which PIL should be adjudicated. Whereas, in contrast to PILs in India, the tutelas of Colombia by virtue of Article 86 Colombian constitution(1991) can be filed only against public authority. Though tutelas can be filed against private individuals and authorities but there are limitations to when tutelas can be filed against private bodies. These are limited to situations where a private actor exercises a public function, or there is a particular relationship of disadvantage between the parties.[57]Hence, while the tutela acts to some degree as check on private power, there is no wide ranging system of tutelas against the individuals.[58] Also, the tutelas must be ruled within 10 days unless they are reviewed or appealed.

Lastly, there is a stark difference between the tutelas and PILs. In Colombia as we know there is political instability to a level where the entire system of justice can possibly crumble into tatters. People in Colombia see tutelas as an end to protect their rights leading from basic rights such as right to get hospital treatment to even issues such as in settling personal

[56] Brookings, https://www.brookings.edu/wp-content/uploads/2016/07/colombia_t-025_2004.pdf (21st July 2023).

[57] Patrick Delaney, *Legislating for Equality in Colombia: Constitutional Jurisprudence, Tutelas and Social Reform*, 1 TheEqual Rights Rev., 50, 54 (2008), https://www.equalrightstrust.org/content/legislating-equality-colombia-constitutional-jurisprudence-tutelas-and-social-reform.

[58] *Id.*

interests over public interests. People believe that there are no alternatives to tutelas and are desperate to settle all their issues whether private or public interests through tutelas. But in India, we have a strong and stable political and legal system and hence we are able to compartmentalise different branches of legal justice system and the country is not dependent only on PILs to access justice for the disadvantaged sections of society. Another facet of Colombian tutela is that since it has a status of supremacy in legal justice in Colombia it has transgressed separation of powers by its judicial overreach. The Constitutional courts while ruling over tutelas provides allocation of money or budget in order to meet expenses, also formulates policies and even form rules and regulates deep rooted social issues which is in contrast with democracies like India where the courts refrain from entering into legislative domains. For example- same sex marriages are legalized by Constitutional courts via a tutela ruling in Colombia whereas in India it has been deliberated as a matter under legislative prerogative. Tutela in Colombia is a panacea for everything for Colombians. Even in a recent tutela ruling, a tutela has been sought for setting aside a arbitration award in Colombia. Whereas in India, the Arbitration and Conciliation Act of 1996 deals with arbitration award and PIL in arbitrations will be bleak as we have a legislative framework which itself is inclusive.

CONCLUSION

All over the world in almost all the legislations it is articulated that the man is born free and has an indispensable right to equality. In order to embrace the right to equality two ways are adopted, either there are prohibition on states for certain acts which violate an individual's prospects for equality or there are positive imperatives developed in order to further the right to equality to masses. Litigations in public interest are one such positive imperative developed to further the right to equality. Public Interest Litigations In India and Tutelas in Colombia are two such tools which try to protect public interests in their respective countries. They both have some similarities and dissimilarities but their purpose is to protect those who cannot protect themselves due to reasons such as geographical divides, political backwardness and social isolations. But one has to also understand that these litigation methods primarily one adopted in Colombia i.e. Tutela cannot be the only mechanism to secure rights as it can lead to concentration of power in one legal organ and hence can compromise the system of checks and balances and Rule of law.