

The government seems to have given up its efforts to introduce in Parliament the Public Interest Litigation (PIL) Bill, 1997, to rein in the judiciary in the garb of stopping the so-called flood of frivolous public interest litigations.

A draft of the proposed bill, then pending before the Cabinet for approval, suggested a mandatory interest-free deposit of Rs one lakh for every PIL in the Supreme Court and Rs 50,000 in the High Court. The deposit would have been refunded, at the discretion of the court, if the petitioner won the case. However, if the court

found a petition frivolous, the petitioner would have not only forfeited the deposit, he would also have attracted a punitive fine. The draft proposal sought to cover not only prospective PILs but existing cases as well.

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The law ministry said it contemplated this legislation "to regulate" PIL, the profligacy of which has been thought to be "choking" the judicial system. Expressing concern over the huge back-

CURBING MEDICO-LEGAL ACTIVISM

The bill to control public interest litigation would have had serious repercussions for medical activists, writes Vijay Thawani

The note to the Cabinet stated, "The judiciary has digressed from its traditional duties and functions as an inter-

preter of the Constitution and the laws and entered into a field in which it has no competence or safe standards for judicial action... (It) has failed to recognise that it cannot be a substitute for the failure or irresponsibility of other branches of the government and start delivering increasingly legislative or administrative judgements."

WHY THE PIL BILL DIED A NATURAL DEATH

It is easy in a society plagued with horrific ills to get carried away with the notion that public interest litigation (PIL) is a miraculous solution to these problems. It is true that public outrage did play a crucial role in the Supreme Court taking up petitions on behalf of undertrials, children, women, mentally ill persons, pavement dwellers and so on, expanding the notion of the litigant's "standing", and even on its own initiative converting letters and press reports into petitions.

However, PIL has been, at least in part, a post-Emergency image-building exercise for a judiciary trying to redeem itself for earlier caving in to government pressure. It is also often a forum for judges to reserve their place in history by delivering lofty judgements — which are almost always ignored thereafter.

Some months ago, the union law ministry announced it would be introducing a bill in Parliament to amend the Constitution in order to curb the use of PIL. The announcement created an uproar and filled pages of newsprint — for a while. The bill was never tabled in Parliament, though it could presumably turn up in the future.

In fact the announcement should be seen in the context of the on-going tussle for supremacy between the executive and the judiciary. Note that the law ministry's announcement was made at the height of the *hawala* litigation, which had been portrayed by the press as proof that the judiciary was the one working arm of the state. Litigants in the *hawala* litigation alleged that huge pay-offs had been made to politicians of different parties, and docu-

mented in diaries. The *hawala* case implicated many (particularly Congress) politicians. It is another matter that they may ultimately go Scot-free.

It is not coincidental that the bill dropped out of the news once the Delhi High Court decided that the Jain diaries, the basis for the *hawata* litigation, did not constitute fool-proof legal evidence. At the same time, the judiciary's credibility received a substantial setback when the Supreme Court Bar Association levelled charges of misconduct at Justice MM Punchhi, next in line for chief justice of India.

The announced move to curb PIL was part of the executive's strategy to caution the judiciary against 'excessive activism'; it was also an exercise by the United Front to placate its Congress supporters. Finally, the bill would have also furthered the executive's agenda of regaining control over the appointment of high court and Supreme Court judges, something which it lost to the judiciary in 1993.

How seriously should we take such threats? We must remember that PIL has become an integral part of judicial activity in India, with its own checks and balances to prevent its abuse. The law ministry is also aware that any attempt to curb the use of PIL would be met with stiff opposition from the judiciary and the public. It is too well-entrenched; and such an attempt would not stand the test of constitutional scrutiny.

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