INDEPENDENT JUDICIARY AND RENT SEEKING IN INDIA

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Just as self-interest motivates an individual’s private choices, it also motivates social and political decisions.
Resources are scarce. And political rules determine how these competing demands, which far exceed the government’s ability to provide them, will be arbitrated. In this political decision-making, the state has the power to artificially create rents.
Rent seeking is the expenditure of scarce resources to capture artificially created rents and transfers. It is the process by which interested individuals or groups try to obtain benefits for themselves through the political process.
An interest group is an organization of people who share a common interest and work together to protect and promote that interest by influencing the government.
Interest Groups and Forum Shopping

Interest Group

- Legislature
- Executive
- Judiciary
"It is the endeavour of the central government to make reforms in labour laws and to proceed from minimum wage to universal wage. Because the Opposition is not cooperating in Parliament, we will do it through an executive order."

- Bandaru Dattatreya
Minister of Labour and Employment
COSTS AND BENEFITS

BENEFIT: The change in rules.

COSTS: The rules and norms that must be followed in order to get the rule change.
Interest Group

- Legislation
  - Repeal
  - Delegated Legislation
- Executive Order
  - Ordinance
  - Bye Law
- Court Decision
  - Interpretation of Legislation/Constitution
  - Creating New Rules
Costs

Interest Group

- Quorum Requirement
- Majority Requirement
- Unicameral v Bicameral

- Procedures for Executive Order
- Duration of Ordinance

- Court Fees
- Standing
- Bench Size
- Appeals
The higher the standard for proving standing in the court, the greater the cost of approaching the judiciary.
Bench Size

Larger bench sizes increase the cost of securing a verdict.
Supreme Court is a court of appeal for many tribunals, enabling interest groups to bypass the levels of appeals available to citizens.
Source Vidhi Center for Legal Policy February 2016
Vishaka v State of Rajasthan
AIR 1997 SC 3011
Save the Life Foundation v Union of India
Writ Petition (C) No.235/2012
REPEAL OF SECTION 377, IPC

Naz Foundation v Govt. of NCT of Delhi (2009)
Suresh Kumar Koushal v Naz Foundation (2013)
Rent Seeking: Distance and Access

Source: Vidhi Center for Legal Policy, October 2015
Correlation between percentage of cases filed in appeal from a HC to the SC and GSDP per capita income for that state in 2011 prices.

Source Vidhi Center for Legal Policy October 2015
## Rent Seeking and Advocates

<table>
<thead>
<tr>
<th>Notice issued</th>
<th>Dismissed</th>
<th>Success rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior advocate appeared</td>
<td>67</td>
<td>45</td>
</tr>
<tr>
<td>No senior advocate appeared</td>
<td>60</td>
<td>118</td>
</tr>
<tr>
<td>Total</td>
<td>127</td>
<td>163</td>
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Source Vidhi Center for Legal Policy February 2016
The Indian judiciary is as vulnerable to interest group activity, if not more, than the other branches of government.