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A path to Vindication of the Rule of Law: Administrative Court’s Generous Approach to Standing and Third Party Interventions

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INTRODUCTION

This essay is going to examine whether or not the administrative court’s generous approach to standing and third party interventions is to be welcomed. For clarity, the administrative courts’ approach to standing will first be examined followed by third party interventions. One of the fundamental features of rule of law is that courts should be accessible to all citizens so that their grievances and complaints are heard, and their rights determined and enforced. Thus, “[t]he rule of law in its many guises- represents a challenge to state authority and power.”¹ Judicial review of administrative actions aims at ensuring that, on one hand, decision-makers do not misuse the power granted to them by parliament by exercising it in excess or by applying it without fairness. Citizens are therefore given right to access to court to question the lawfulness or otherwise of administrative decisions. On the other hand, although judicial review seeks to ensure fairness and public confidence and accountability in administration, it also seeks to protect public bodies against unmeritorious and ill-founded challenges, by persons who may use their right to have access to court inappropriately in order to unnecessarily interfere into administrative decisions. This protection seems necessary because, there would not be efficient and effective public administration if decisions of public

authorities are opened to challenges for whatever reason, at any time and by anybody. To make a balance between these interests i.e. the public interest that their administration processes should not be unnecessarily interrupted and the individual interest that courts should be accessible to him to put forward his complaint, English law provides for the requirements of standing. By this mechanism, claimants’ applications for judicial review would be filtered “in order to prevent the frivolous or vexatious applicant from troubling the already over burdened courts or overtly disrupting the administrative process.”

This essay is going to argue that the administrative court’s generous approach to standing presently is a welcome development. In order to do this, the uncertainty existed in the administrative court’s approach to standing before the enactment of Order 53 and Section 31 (3) of the Supreme Court Act 1981 will be discussed and analysed.

Two approaches may be generally acknowledged to be applied by administrative courts on the issue of standing: the generous, liberal, broad or open approach and the restricted, narrow or closed approach. Liberal approach could allow administrative courts to have “enlarged discretion” avoiding past technicalities and thereby permitting public-spirited individuals, organisations and pressure groups to challenge the legality or other wise of a

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4 See R.J.F. Gordon, n. 3 above, p. 51, para. 4-07.
decision made by a public body. By restricted approach the courts could, applying stringent criteria, filter frivolous and vexatious application of a “busybody”\(^5\) who interferes unnecessarily into things that do not concern him thereby interrupting efficient administration and over-burdening the court.\(^6\) One thing which has to be acknowledged is that each approach has its own problems, advantages and disadvantages. Restricted approach may, based (sometimes) on statutory technicalities, likely prevent public-spirited individuals and pressure groups from seeing that the law is tested and enforced and may allow only “the most worthy or most directly affected of applicants”\(^7\) to have standing. It may also make the decision-makers less legally cautious in administration. Nevertheless, generous “approach has been questioned as undermining the democratic process of representative government.”\(^8\) It was pointed out that one of the problems of generous approach could be “the danger of applications being refused under a residual, enlarged discretion”.\(^9\) Having observed the advantages and disadvantages of generous approach to standing this essay will conclude that, as indicated by case-law, although there was uncertainty on standing before the enactment of Order 53 most of the authorities indicated that administrative courts favoured generous approach to standing.

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\(^5\) See R. v Peddington Evaluation Officer and Another, ex p Peachey Property Corporation Ltd. [1966] 1 QB 380, per Lord Denning at 401.

\(^6\) See P. Leyland and T. Woods, n 2 above at p 489.

\(^7\) ibid., 489

\(^8\) ibid., 497

\(^9\) R.J.F. Gordon, n. 3 above para. 4-07, p. 51.
This essay will demonstrate that in order to ensure vindication of the rule of law, fairness, accountability and popular participation in decision-making which is a fundamental feature of democratic society, generous approach to requirements of standing by administrative courts is desirable and should be welcomed. The other limb of the essay will argue that the administrative court’s generous approach to third party interventions should be welcomed. This is because, in addition to the fact that the court would be assisted by competent individuals as well as organisations with relevant expertise to dispose of the complicated matter of public interest before it quickly and skillfully, the process could also enrich legal knowledge with enhanced resourceful data on some complicated issues.

A. HOW STANDING WAS BEFORE ORDER 53?  

Before 1977 there was no certainty as to the position of courts on standing in respect of major prerogative orders, i.e. the certiorari, prohibition and mandamus. Each prerogative order had its own test and even in relation to one order there was no general standard. With respect to declarations and injunctions it was pointed out that “[t]here was no relevant standing rules”\(^{11}\)because they could be applied for in only private actions. However, it may be right to say that even before the enactment of Order 53

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\(^{11}\) See P. Cain, n 10 above p 47.
administrative courts used to be liberal on standing in applications for certiorari and prohibition in particular. For instance, for the application of certiorari an applicant had to show a genuine grievance or that he was ‘aggrieved person’ by the decision he wished to challenge. It may be pointed out that in their interpretation of ‘aggrieved person’ administrative courts seemed to apply liberal approach. This was exemplified in *R v Peddington Evaluation Officer and Another, ex p. Peachey Property Corporation Ltd.*\(^{12}\) The applicants were aggrieved by the assessment on their flats by an evaluation officer which they claimed as high, compared with other flats converted to house which they said was low. They applied for mandamus requiring the evaluation officer to prepare a list based on his statutory duties taking into account in his evaluation the market value being paid at the time. They also applied in alternative for certiorari that the court should quash the list because it was invalid in law. Lord Denning while considering whether the applicants were aggrieved persons had this to say:

“…I do not think grievances are to be measured in pounds, shillings and pence. If a taxpayer or other person finds his name included in evaluation list which is invalid, he is entitled to come to the court and apply to have it quashed. He is not to be put off by the plea that he has suffered no damage…The court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done…”\(^{13}\)

\(^{12}\) n. 5 above.

\(^{13}\) *Ibid.* at 401
It could be understood from the above that as to the certiorari, the law seemed to be more settled than other in prerogative writs. It could therefore be submitted that although there was uncertainty as to the precise test generally, the courts used to apply generous approach in certiorari proceedings and most of the authorities relating to it are in favour of this submission.\footnote{See P. Craig, \textit{Administrative Law} (London: Sweet & Maxwell, 5\textsuperscript{th} Ed), p. 718.} The courts appeared to use the same test in respect of prohibition although it was pointed out that there were some authorities contradicting this claim, and tackled prohibition cases using “private rights”\footnote{\textit{ibid}; at p. 719} perspective. However, although this might be the case, a different approach was followed in \textit{R v Greater London Council ex p. Blackburn}\footnote{[1976] 3 All ER 184} where the court held that “if the government transgresses the law…any one offended can draw it to the attention of courts.”\footnote{Per Lord Denning MR at 192.} The issue was more complicated with respect to the test of standing in applications for mandamus. One may not say which approach majority of the decisions favoured. While some authorities suggested favouring restricted approach requiring the applicants to show a breach of a legal right yet other authorities requested the applicant to show the existence of interest which was affected by the decision.\footnote{This was acknowledged by Prof. P. Craig, supra; G. Aldous and J. Alder, n 10 above at p. 91 and I. Loveland n 3 above at pp. 525-526.} In applications for injunction and declarations the courts applied narrow approach with a “stringent requirement”\footnote{See R.J.F. Gordon, n 3 above, para. 4-06 at p 49.} that the applicant had to establish the existence
and breach of private right.\textsuperscript{20} It will be pointed out that although it is acknowledged there was uncertainty as to the approach on issues of standing in applications for judicial review, great number of authorities favoured generous approach.\textsuperscript{21} This may be justified in the fact that unlike declaration or injunction, certiorari, prohibition and to an extent mandamus are more public oriented having to do with questioning the legality of the decision of public administrator. Another justification might have been the fact that these three prerogative writs unlike injunction and declaration, were initially issued by the Crown as administrative writs as opposed to being private remedies like injunction and declaration.\textsuperscript{22} To sum it up on this issue, P. Craig pointed out that:

“\begin{quote}
There was, prior to 1977, considerable diversity in the case law on standing, both within each remedy and as between them. Even when the same words, such as ‘private right’, ‘special damage’, ‘person aggrieved’ or ‘sufficient interest’ were used, it could not be assumed that they bore the same meaning. In general terms, the standing requirements for the prerogative orders were more liberal than those for declaration and injunction.”\end{quote}\textsuperscript{23}

This uncertainty as to the requirements of standing, both in the major prerogative writs, and to certain extent to injunction and declaration, led to the enactment of Order 53 which is to be examined in the next part of this essay.

\textsuperscript{20} See \textit{Boyce v Peddington Borough Council} [1903] 1 Ch. 109.

\textsuperscript{21} De Smith, Woolf & Jowell’s n. 3 above at p. 33, para, 2-008.

\textsuperscript{22} See G. Aldous and J. Alder, n 10 above at p. 90.

B. IS THE ADMINISTRATIVE COURT’S GENEROUS APPROACH TO STANDING TO BE WELCOMED?

Section 31 (3) of the Supreme Court Act 1981\(^\text{24}\) provides:

\begin{quote}
(3) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with the Rules of Court; and the court shall not grant leave to make such application unless it considers that the applicant has sufficient interest in the matter to which the application relates.
\end{quote}

The phrase “sufficient interest” is not defined by the Act and therefore can only be understood through the interpretations given to it by administrative courts. Thus, “the courts are left to set parameters of what does and does not constitute “sufficient interest””.\(^\text{25}\) In doing this the courts take into consideration many factors among which are the extent of the claimant’s interest; the impact of the interference on the claimant and the members of public; whether a statute gives the claimant right to be heard before the public body takes the decision he is challenging; or whether a statute creates a duty to complain and whether the decision in question has interfered with one of the claimant’s fundamental rights. Depending on the nature of each case, where the court applies

\(^{24}\) This section restates the provisions of Order 53, rules 3(1) and (7). See also De Smith, Woolf and Jowell, n 10 above at p 110.

\(^{25}\) De Smith, Woolf and Jowell, n 10 above, para 2-023, p.111.
generous approach to the requirement of standing in an application it is likely that the claimant would have “sufficient interest”. It has to be noted that section 31(3) is silent on whether or not the requirement of “sufficient interest” applies to all the five remedies or it applies only to the three prerogative orders.

The first and best interpretation of Order 53 was given by the House of Lords in Inland Revenue Commissioners v National Federation of Self –Employed and Small Businesses Ltd.26 Some employers of Fleet Street print casual workers had an arrangement with Inland Revenue that the casual workers would stop their practice of evading tax by using false names and the Inland Revenue would not investigate the previous practice. The National Federation representing self-employed and people in some small businesses sought declaration that the arrangement was unlawful and applied for mandamus to compel Inland Revenue to collect from the casual workers all the tax due for previous years. The Divisional Court held dismissing the application that National Federation had no sufficient interest. National Federation then appealed successfully to Court of Appeal and the Inland Revenue appealed against the Court of Appeal’s decision in favour of National Federation to House of Lords.

Although it may be hard to state with precision the ratio of the case because all the Law Lords elaborately gave their own opinion on variety of legal issues, it is clear that the decision centrally determined the issue of standing particularly on what would amount to

26 [1982] A.C.617 [herein after referred to as Federation’s case]
“sufficient interest” and at what stage could the court consider the issue of standing.\textsuperscript{27} On this the House of Lords decided that the court should consider the issue of standing at permission stage in order to form what Lord Diplock called a “prima facie view”,\textsuperscript{28} which view may change depending on the evidence to be heard further by the court at the full hearing of the application on merit. Thus, at leave stage the court is to make “a provisional finding of sufficient interest”\textsuperscript{29} which may or may not stand depending on the evidence put forward before the court by the applicant. By this decision the question of standing is to be entertained at the full hearing of the application on merit. That is to say the issue of standing and the merit of the case are to be considered together although there may be some cases where the applicant’s claim is so weak that the court may refuse standing even from the leave stage.

The fact that the issue “is no longer be seen as a preliminary issue”\textsuperscript{30} indicates the House of Lord’s readiness to do away with the restricted technical approach of the past which denied individual claimants right to have their genuine complaints heard because they were not personally affected.\textsuperscript{31} By this approach, the court will look into the merit of the application and it may refuse standing because the application is unmeritorious not because the applicant does not have personal or genuine interest or has not suffered some

\begin{footnotes}
\item \textsuperscript{27} I. Loveland, n 3 above, p 527.
\item \textsuperscript{28} \textit{Ibid}; at p. 642.
\item \textsuperscript{29} \textit{Ibid}; per Lord Fraser at p. 645.
\item \textsuperscript{30} See Loveland, n 3 above at p 528.
\item \textsuperscript{31} C. Himsworth, n 10 above at p 203.
\end{footnotes}
financial loss or for some other technicalities. Of course the court may take into consideration in some cases the applicant’s interest together with other factors, like public interest and the requirements of rule of law but it may not refuse standing only because the applicant does not have personal interest. However, this has to be distinguished from the position under private law where the cause of action determines standing of the plaintiff.

It is generally accepted that the House of Lord’s decision in the Federation’s case has brought many changes in the principles governing the requirement of standing which was full of contradictions and uncertainty in the past.32 Although one may be “a rash commentator”33 if one concludes that this new approach solved ‘all’ questions on standing, it is apparent that the development would save administrative courts from past contradictions. It would also permit deserving and public-spirited individual applicants and organizations to exercise, (more freely) their right to access to court. Lord Diplock pointed out in the Federation’s case that:

“…it would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited tax-payer, were prevented by outdated technical rules of locus standi from bringing to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.”34

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32 See De Smith, Woolf and Jowell, n 10 above.

33 I. Loveland, 3 above, p. 536.

34 Federation’s case, n. 26 above, at p. 644.
Following this development of liberalisation of the requirement of standing, administrative courts appeared in many cases to have abandoned the old rules of technicalities and embraced more generous approach particularly in cases of allegation of serious illegality brought by public-spirited applicants.³⁵ In *R v Summerset County Council ex p Dixon*³⁶ Mr. who was a parish councilor and a local resident concerned with matters affecting environment was successfully granted standing to challenge the grant of a permission to quarry in an area which covered the place of his election candidature. It was argued that the applicant was a busybody with no ‘sufficient interest’ “having no interest as a landowner or as a possessor of private right or interest threatened by the proposed quarrying”.³⁷ This argument was rejected by Sedley J. holding that:

“Public law is not at base about rights, even though abuses of power may and often do invade private rights; it is about wrongs – that is to say misuses of public power; and the courts have always been alive to the fact that a person or organization with no particular stake in the issue or the outcome may, without in any sense being a mere meddler, wish and be well placed to call the attention of the court to an apparent misuse of public power. If an arguable case of such misuse can be made out on an application for leave, the court’s only concern is to ensure that it is not being done for an ill motive…Mr. Dixon is...perfectly entitled as a citizen to be concerned about, and to draw the attention of the court to, what he

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³⁷ ibid; para. 8
contends is an illegality in the grant of a planning consent which is bound to have an impact on our environment.”

The above judgement has clearly pointed the purposes which liberal approach to standing could serve in public law generally i.e. the protection of public against misuse and abuse of power by the decision-makers. This is in essence the general purpose of judicial review of administrative actions. However, administrative courts seem to be applying a different approach to standing in cases where the applicant is not an individual representing an interest but is an organisation or a group formally established to pursue some interests. This is more particularly where the association is an unincorporated one. Due to the fact that ordinarily an organisation could be more financially capable to handle public-spirited cases with all the expertise needed and is not likely to be “intimidated by the potentially adverse personal consequences of bringing an action” it could be expected that administrative courts would be more willing to grant standing to these associations where an allegation of serious illegality is made against public authority than an individual applicant. It may be argued that, while doing this could tremendously assist the court in disposing of the complicated issues pertaining to public interest efficiently and minimises potential illegality in public administration; it could, on the other hand open ways for some of these associations to be using generous approach to standing as a means of criticising and challenging all types of government’s decisions in the name of public

38 ibid; paras. 28 and 29 respectively; (Emphasis added)
40 I. Loveland, n 3 above at p. 532.
Although this argument may not necessarily be cogent and convincing, the decision in *R v Secretary of State for the Environment, ex p Rose Theatre Trust Co.*[^42] may be a good example of a case where restricted approach to standing was applied. A trust consisting of interested persons, writers and archeologists with interest of saving ancient monuments was formed purposely to get one of the old London theatres discovered listed as one of the Ancient Monuments by the respondent. The trust challenged the respondent’s decision in an action for judicial review for his refusal to list the theatre as national monument. However, Schiemann J. applying restrictive approach refused standing to the trust holding that although it is not necessary for the applicant to establish direct financial interest before standing is granted, yet an assertion of interest by many people does not automatically mean that they have one.

The first advantage of administrative court’s generous approach to standing could be understood from Lord Diplock’s wisdom in the *Federation’s case*[^43] as vindication of the rule of law and bringing to an end of unlawfulness in public administration by public-spirited citizens. Against this advantage, as it was pointed by Lord Schiemann is the “distraction from the business of governing”[^44] which may in turn lead to less concentration on administrative work. Liberal approach to standing has also been questioned as undermining democratic process by giving standing to pressure groups that may use the opportunity to politically sell out their ideas or to campaign for what was

[^41]: Ibid; at p. 533.
[^42]: [1991] 1 QB 504. while writing extra-judicially His Lordship elaborately discussed the advantages of both generous and restricted approaches to standing; see K. Schiemann, ‘Locus Standi’ n 3 above.
[^43]: No. 34 above at p. 644.
[^44]: K. Schiemann, n 3 above at p 348.
once lost. Another objection is that by generous approach, there is a danger that a number of applications may be refused under “a residual, enlarged discretion.”

Nevertheless, the argument that generous approach to standing may undermine democratic set up could not stand because by this approach, members of the public would, through their access to court, have their say in the decision-making by testing the legality of the decision taken for or against them, by their elected representatives. This may be equated undoubtedly to collective decision-making and popular participation which qualities are the foundations of democratic governance. In addition, the right to access to court by citizens is one of the most recognised common law constitutional rights. It can therefore be argued that the generous approach to standing as being applied by administrative court should be seen positively as the court’s attempt in upholding one of the old constitutional rights of common law.

Further more, it should be borne in mind that the purpose of judicial review is to check out abuse and misuse, as well as misapplication of power and to protect the legitimate expectations of the members of the public. Administrative court intervenes to question the legality of a decision not only of public officials but of other organisations, institutions and agencies exercising public functions; like churches, charities, universities, and other non-governmental bodies. Hence public functions are not “the exclusive

45 See R.J.F. Gordon, n 3 above at p 51, para. 4-07.

domain of state." It could be argued that administrative court does not intervene into the decisions of public authorities only like the Home Office; legality of the decisions made by inferior courts may also be subject of judicial review. It could therefore be a complete misunderstanding of the purpose of judicial review if administrative court’s roles are restricted only to questioning the decisions of government officials or agencies. For this reason the argument that generous approach to standing could undermine democratic setting should not be sustained.

Another point to be noted is that since laws are made to be enforced, if citizens are not generously given access to courts when they see an illegality being committed, then the laws would be in theories and in statute books only; and the illegality would continue to the detriment of the entire society. This is because, as pointed out by Lord Shiemann:

“…[t]he administrators will not themselves in general activate the courts since they either believe that they are acting in accordance with the law or, believing themselves to be acting illegally will not wish this fact to publicly proclaimed.”

Furthermore, it could be arguable that there may be certain exceptional cases particularly pertaining to environment where, because of the circumstances of the case the court may be more willing to grant standing to public-spirited organisations than individual applicants. For instance if Green Peace did not challenge the decision made by Secretary

47 See De Smith, Woolf and Jowell’s n 3 above at p 66, para. 3-023.


49 K. Shiemann, n 3 above, p. 346.
of State on the discharge and disposal of waste material at Sellafield, and if the court did not grant standing to Green Peace by applying liberal approach, it would be doubtful if the court could grant standing to one of the neighbours to Sellafield.\textsuperscript{50} Generous approach to standing could also bring about efficient and accountable administration whereby decisions would be taken cautiously with legal prudence and in accordance with law. This will have positive consequence on public administration in that the public would have more confidence and trust on the administration and the decision made might not be susceptible to public challenge.

Generous approach to standing was also objected to because of its possibility likelihood to allow vexatious and frivolous applications trooping into and over-burdening the court, which in effect might negatively affect the administration of justice. It appears that the proponents of this argument did not consider the rise in the cost of litigation that nowadays, it is difficult to find a busybody who ready to unnecessarily spend time and resources in putting forward an unmeritorious application with a view only to interfering into things that do not concern him. It may be pointed that, even if there could be such a person, the administrative court is procedurally empowered to strike out any application which appears to be an abuse of court process. Thus, generous approach to standing may not hinder the court to invoke some of its traditional and statutory mechanisms of dealing with frivolous applications. It should also be noted that as the consideration of issue of standing at leave stage is provisional, it may be hard for a busybody’s weak case to

escape that stage to the substantive hearing. It could be submitted that generous approach to standing would bring confidence of members of the public on decision-makers; brings accountability in public administration; minimises public challenge; and above all is a mechanism for vindication of the rule of law.

C. IS ADMINISTRATIVE COURT’S GENEROUS APPROACH TO THIRD PARTY INTERVENTIONS TO BE WELCOMED?

Another attitude of the administrative court that attracted criticisms and comments is its generous approach to third party interventions. Two opposing views for and against the administrative court’s generous approach to third party interventions could be seen in the following paragraphs:

“An expansive intervention regime shifts the courts towards a legislative function, by allowing intervention to operate as one of several tactics in a campaign strategy and by permitting political battles lost elsewhere to be revisited.”51

“Interventions where appropriate should…be viewed as a welcome tool of assistance, rather than treated as suspicious Trojan horse for political activism by the back door.”52


In the public interest, the court may require that persons other than the parties to the application before it be served with the court processes inviting them to come to make representations on issues that the court feels are of complex public interest. This is a discretionary power given to court by Order 53, rule 5(7). On the other hand, the court may also serve and call any person it considers fit and proper opposing the representation. By this process, the court invites professional bodies, non-governmental organizations, pressure and other interest groups having recognised experience, expertise and skill in a particular field, e.g. environment, medical ethics, human rights to come and make representations in their field of expertise so as to help the court to reach a final conclusion on a complex issue of public interest. These representations are by their nature neutral because the court invites disinterested persons and organizations to assist it on a point of law or fact to dispose of the matter before it. Again, as a matter of justice, the court may also permit persons and organisations (not original parties to an application before it, not even joined as parties), who may be directly affected by the out-come of the application before it, to make representations. The basis of this process is justice which demands that persons, who may be directly affected by the court’s judgement although not parties to the application, should be heard before the court gives its final verdict. Justice also demands that where the court finds it fit it may seek the assistance of experts and professionals in complex matters that affect general public. This is an objective neutral process designed to achieve justice, assist the court not only dispose of the matter without
delay but dispose of it skillfully, tactfully and professionally - Justice to the court, to the parties, to the application and to the public generally.

Nevertheless, it is pointed out that nowadays third party interventions have assumed another shape, from “ostensibly neutral submissions, to rather more partisan arguments” which consequently “shifts the court toward legislative function”. This is because, the argument goes, the administrative courts allow the intervention “to operate as one of several tactics in a campaign strategy and permitting political battles lost elsewhere to be revisited.” The procedural rules have also been blamed for their vagueness and uncertainty and for their failure to assist the court “as to who may intervene, when and why.” The large and influential non-governmental organisations that may not be required by court to present their democratic credentials are accused of using the intervention as political battlefield on matters that do not reflect public interest. What prompted this criticism seemed to be the administrative court’s generous approach to third party interventions through which pressure groups and other non-governmental organisations get access to court either by invitation or upon their own applications. However, this criticism seems not have taken into account certain features

53 See generally S. Hannett, n. 51 above.

54 ibid., 128

55 ibid., 129

56 ibid.

57 ibid.

58 ibid., 135
that characterise third party interventions. For instance, the argument should have considered the administrative court’s role in the interventions; the legal consequences and the purpose and nature of the whole process of third party interventions.

Objectivity and justice demand that on certain complex issues affecting the members of public, representations of some proper and well experienced organisations with relevant skill and knowledge may offer resourceful help to court. Authorities on third party interventions have indicated that influential organisations invited or permitted by court to make representations do have the requisite skill and knowledge in the fields they made their representations. Most of the organisations that were permitted to make representations (on professional fields) ranging from human rights, environment, medical or legal ethics, discrimination, refugees and immigration are recognised internationally to have the skill and credential to speak in the field they were permitted or invited to speak. It may be hard to identify most of them with political activity in its true and objective sense or political ideology they mainly pursue.

The court, while applying generous approach to third party interventions does not restrict itself to inviting or permitting non-governmental organisations and pressure groups to make representations. There are authorities indicating that banks, insurance companies, financial institutions, media houses and non-partisan individuals and organisations have

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59 Generally on countering the objections raised by S. Hannett n.51 above, see M. Arshi and C. O’Cinneide n 52 above.

been permitted to intervene at one time or another, in matters that the court might find them fit to contribute.\textsuperscript{61} Furthermore, the question of court’s failure to request the intervening organisations to present their democratic mandate as representing their constituency can also be objected to as contradicting the essence and purpose of third party interventions. This is because what court usually considers in third party interventions is not whether the intervener was democratically elected or could democratically speak on behalf of a constituency. Instead, the court looks into the organisation’s credentials, expertise, integrity and competence to offer the desired relevant assistance sought by the court.\textsuperscript{62} This ordinarily has to do with fact that the court bears it in mind that the whole process has been judicial process targeting at justice for the preservation and vindication of rule of law. It is absolutely doubtful to find a situation where the court refuses permission to intervene for reasons that do not have legal bearing -substantively or procedurally. In addition, it has to be noted that representations made in third party interventions do not bind the court. The court has absolute discretion to accept or reject a representation.

CONCLUSION

It may be pointed out that the Human Rights Act 1998 has brought an entirely different test of standing and its provisions could also affect third party interventions. Under the HRA, the test is not whether or not an applicant has “sufficient interest” but whether the


\textsuperscript{62} M. Arshi, n 52 above, p 72.
prospective applicant is a victim of the breach of the Convention rights.  

This seems to be directing the courts to apply restricted test to standing based on whether an applicant is personally affected or not. Section 7 (3) of the HRA provides that in proceedings for judicial review a person can be said to have sufficient interest pertaining to a decision he is challenging, if he is or is going to be a victim of that decision. And accordingly, the test of who is a victim should be determined applying the criteria under Article 34 of the European Convention of Human Rights. By this Article, the European Court of Human Rights could “receive applications from any person, non-governmental organisation or group of individuals”  who are victims of human rights violations. Although it would appear that the HRA has brought about a narrow approach to standing on (Convention rights), yet it may be arguable that the fact that the European Court of Human Rights has consistently been receiving applications from charities, companies, churches, political parties and indirect victims applying generous interpretation to ‘victim’, could strengthen the expectation that the domestic courts may not apply stringent test to ‘victim’ in applications before them.

It may also be pointed out that, because this development has brought about other dimensions to human rights issues, which could make administrative court play a different role (in addition to the traditional common law roles), it could be optimistically expected that the court’s approach particularly to third party interventions would be

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64 Article 34 of the ECHR; and Section 7 (6) of the HRA 1998.


generous. This is because, the court’s added role in determining complex human rights issues and accommodating different people with variety of applications on human rights affecting general public, could call for interventions of some of the experienced organisations to offer their helping hands. Although non-governmental organisations and pressure groups could not have standing under HRA “unless they can establish that their members are actual or potential victims” yet influential and experienced organisations like the Amnesty International, the Human Rights Watch, Liberty, JUSTICE, Greenpeace and other relevant organisations and pressure groups, may still have roles to play in assisting the court by their resourceful interventions.

This essay has demonstrated that administrative court’s generous approach to standing and third party interventions should be welcomed because of the reasons stated above. Moreover, certain complicated legal concepts which remained controversial may be raised by interveners and determined by courts through third party interventions. In addition to the fact that this will assist administrative court to dispose of the matter before it quickly, it could, at the same time greatly enrich legal knowledge and jurisprudence. Generous approach to third party interventions may also be of assistance to indigent persons who may not afford employing the services of a legal practitioner. Although there may be provisions for legal aid in certain cases to such persons, yet the fact that the limited resources for legal aid may not cater for all the applicants in need of it should not be ignored. Certain matters that may not be raised by either of the parties to the

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67 H. Barnett, n 1 above, p.641

68 M. Arshi, n 52 above p. 74.
application which may be of great importance to the parties, the court and to legal knowledge generally may be raised by an intervener because of his or its requisite knowledge and experience in the field in controversy. This will assist not only the court in doing justice but will also win the confidence of the parties and the general public in the administration of justice.  

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69 ibid., p. 75.
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