PUBLIC INTEREST LITIGATION

A Tool for Social Action and Public Accountability

Anuradha Rao

Public Affairs Centre, Bangalore
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Preface

Public interest litigation (PIL) is a phenomenon that has witnessed impressive advances in applications over the past twenty-five years in India. As the world’s largest democracy struggles to cope with conflicting demands of different sections of its society, developmental needs, private interests and the functioning of the government, PIL is found to play an increasingly important role in this process.

Against this backdrop, this monograph draws on the experiences of some citizens and members of voluntary organisations who have engaged in PIL as a means to resolve issues of concern to them and also on existing literature on PIL. The views of judges who have heard PIL cases are included as well. The intention is to examine PIL as an advocacy tool in the current scenario rather than analyse it as a legal phenomenon. It attempts to de-mystify the law and legal processes, and create realistic expectations of PIL, given the current ground realities. It is not the intention of this paper to examine or analyse legal theory which has been admirably done by academics and learned professionals in the field (see references). Nor is it intended to be a ‘how-to’ manual on PIL. As the range of issues brought before the Courts as PIL petitions indicates, there are raised expectations about what PIL can achieve. It is now becoming increasingly evident that the outcome of a case is determined largely by how PIL is used, by whom and why. It also depends on the judge who hears it. While there is abundant literature on PIL as a judicial phenomenon, there is little in existing writings that examine PIL from the point of view of a lay-practitioner, particularly one with a non-legal background.

Despite the complexities and constraints, these ‘practitioners of PIL’ have felt committed deeply enough to an issue to interpret the law imaginatively, mobilise the necessary resources, and in many cases, obtain landmark judgements which have impacted on the lives of hundreds of thousands of people. Even partially successful, or indeed failed attempts, narrate useful lessons on how the system functions. In taking a ‘behind-the-scenes’ look, we hope to understand some of the non-litigative aspects of litigation in the public interest as well. What motivated these practitioners? How did they pick their issues? How did they
access information and develop a case? How long does it take for adjudication of cases? What were some of the satisfactions and frustrations? What factors contributed to the success/failure of their case? Did any ground-level change come about as a result? What lessons did they learn? Answers to these questions have been explored in this paper with the hope that they could provide valuable insights to anyone contemplating PIL.

Apart from secondary data from published works, all material contained in this publication is based on personal interviews.

**Executive Summary**

The post-Emergency period in the late 1970s and early '80s witnessed a phenomenon which is now recognised world over as one of the most important innovations in the Indian judicial system - social action litigation, which was later to be more widely recognised as public interest litigation (PIL). **Public interest litigation refers specifically to the responsibility of the Supreme Court of India (Supreme Court), and the state High Courts to protect the fundamental rights of all citizens of India.**

The Indian judiciary functioned in a conservative mode for the first two decades after independence and was widely perceived to be inaccessible to the poor and disadvantaged. The State of Emergency declared in 1975, which had virtually suspended all political and civil rights, triggered an attempt by the judiciary to re-assert its institutional credibility as the protector of people's rights by curbing the excesses of the State. In the post-Emergency years, the Courts opened their doors to a flood of litigation that in one form or another sought to uphold fundamental rights guaranteed in the Indian Constitution.

Over the years PIL, which was intended to make judicial processes more accessible to the poor and disadvantaged sections of society, has come to encompass a much wider range of issues, including those relating to consumer rights, the environment, and civic participation in governmental decision-making. Indeed, as citizens increasingly perceive the administrative and political wings of government as having failed them, they turn to the Courts for remedy on a range of issues.
Major findings

1. PIL has grown from its nascent form as social action litigation, to encompass a wide spread and diversity - of issues, of practitioners, of strategies, of resources employed, of the magnitude of change in ground reality. More recent developments such as the Consumer Courts, the National Human Rights Commission and the National Commission For Women provide alternative forums at which many cases that may have earlier been seen as appropriate for PIL can now be presented. Despite this, where issues of systemic reform and checks on the abuse of power by state agencies are to be addressed, the higher judiciary is still entrusted with the role of protecting fundamental rights and acting as a watchdog in checking excesses of the State.

2. Despite the complexities, PIL continues to remain an effective advocacy tool within the reach of concerned citizens and citizens' groups. It is, however, necessary to recognise factors supportive of PIL, safeguards against misuse of PIL and ground realities that affect the outcome. Considerations to be borne in mind in relation to PIL are:

- It is important to determine whether PIL is indeed warranted, and that it is the best option under the circumstances – premature use of litigation could cut off other avenues of redress and lock up an issue in Courts for a long period.

- Chances of success are better when an issue is researched thoroughly; an argument is framed well and; remedies suggested are clearly in the public interest. Petitioners face enormous difficulty in getting information, but required information can be accessed through alternative sources or through the Courts themselves.

- PIL requires is a high level of commitment from social action groups, lawyers and other sympathetic professionals.

- It is critical to establish the locus standi by indicating that the petitioner is seeking a public remedy for a class of persons represented by him.

- There are several weaknesses in PIL – judges are unpredictable and could be dictated by their own whims and biases, or
influenced by local powers. The judiciary is overloaded with PIL petitions, affecting the main work of Courts. There is not adequate support for judges in scrutiny of PIL petitions, and systems for this need to be established.

- The impact of PIL is uncertain because:

- The extent to which Courts can monitor the implementation of its directives is limited.
  
  - Judges are generally perceived to be unwilling to punish those guilty of contempt of Court despite having powers to do so.
  
  - Most of the petitioners/organisations do not have any active feedback system to monitor the implementation of judgements or gauge the operational impacts.

3. Costs involved in PIL are becoming a concern since Courts are conservative in awarding costs to PIL litigants even when the resources of the adversary are huge.

4. There is danger of a backlash against PIL and judicial activism as the boundaries of each branch of government are being tested, and the public perceives the Courts as the final arbiter of public conflict. The judiciary is also cautious about assuming executive responsibilities and tends to revert executive decisions back to the concerned government agencies, often those against whom the petition has been filed in the first place.

5. PIL is a necessary and healthy development in a democratic society, and needs to be safeguarded through:

- Codification of criteria and procedures in a manner that PIL meets its original intent.

- Making it mandatory for Courts to award minimum costs to NGOs.

- Establishing a resource centre with the information, financial and professional strengths to develop PIL, and to monitor its impact through an effective feedback system.

- Training courses for the judiciary and lawyers on PIL.
INTRODUCTION

The past two decades have seen the term public interest litigation (PIL) become almost common currency and a panacea for all ills - be it human rights violations, displacement and environmental damage caused by large dams, degradation of forests, potholes or corrupt politicians. As citizens increasingly perceive the administrative and political wings of government as having failed them, they turn to the Courts for remedy. But how realistic are we in our expectations of PIL, and how effective has it been in bringing about systemic changes and altering ground-level realities? This paper draws upon the experiences of some practitioners, and in telling their stories attempts to define public interest litigation, identify aspects which contribute to its success or failure, and its strengths and drawbacks as an advocacy tool. In order to place these cases in perspective, an attempt is made here to briefly trace the concept and historical development of PIL.

Background

PIL has placed the Indian judiciary on the world map as being innovative in interpreting the law and developing judicial procedures and systems, which make justice accessible to the common person. What set off this sea change in a judiciary that for the first two decades after independence had functioned in a conservative mode, defined largely by procedural formality, perceived as accessible only to the educated elite and inspiring little confidence in the larger masses who were illiterate and poor?

A confluence of socio-economic and political factors brought about a transformation in the functioning of the higher Courts in India, expanding the notion of what could be placed before them for justice, and prescribing an activist role for the judiciary in securing justice for the nation’s voiceless. The term or concept of PIL is not new - it had first been used to describe a legal development in the United States of America in the 1960s. As Dr. Upendra Baxi, a leading Constitutional expert says, "the issues within the sway of public interest litigation in the us concerned not so much state repression or government lawlessness but rather civic participation in governmental decision-making. Nor did PIL groups there
focus pre-eminently on the rural poor. And, typically, PIL sought to represent ‘interests without groups’ such as consumer protection or environment.” However in India, the connotation and growth of PIL, at least initially, took a distinctly different route. Its emphasis and intention was to make judicial processes more accessible to the disadvantaged sections of society, and to ensure adequate judicial protection of their human rights.

It would be more accurate to say that one of the most important innovations in the Indian judicial process is social action litigation (SAL), which tried to distinguish itself from the American definition of public interest litigation. In the words of Justice P.N. Bhagwathi, “SAL? There is a new movement for peace and justice growing out of India. But this time the messenger does not wear a loincloth or spin at the wheel. The modern day prophets are judges, lawyers and social activists interested in non-violent social change... The new movement is called social action litigation. The portals of the Supreme Court are finally being thrown open to the poor and the disadvantaged.” And as Upendra Baxi wrote, “the Supreme Court of India is at long last becoming, after 32 years of the Republic, the Supreme Court for Indians.” In today’s context these proclamations may sound rather overstated and the lines between SAL and PIL appear blurred, but in the context of the ’70s and ’80s which were in political and social ferment, they reflected a radical departure from the manner in which the Courts had been functioning.

Indian Constitution and the Role of the Judiciary.

The Constitution of India, effected in 1950, drew upon the British, United States and Australian models to provide a system of checks and balances between the three branches of government in a democratic parliamentary system. The Court system reflects the strong central government. Each state has its own judicial hierarchy topped by the State High Court. The nation’s highest Court, the Supreme Court, began with five judges in 1950, increasing in number to twenty-six (currently there are twenty-one judges, with several vacancies to be filled). Supreme Court judges are selected in closed consultations between the President and the Chief Justice, who by tradition, is the judge who has served the longest.
The Supreme Court has extensive original as well as appellate jurisdiction. The Court interprets Central and State laws in the light of the Constitution in resolving disputes between State and Central governments. It also decides appeals on criminal and private law matters sent up from the state High Courts. Critical to our concerns here, is the original jurisdiction of the Supreme Court over all cases concerning fundamental rights contained in Part III of the Constitution. These include:

Article 14  Equality of all persons before the law.

Article 15  No discrimination based on religion, race, caste, sex or place of birth.

Article 16  Equality of opportunity in matters of public employment with no discrimination on grounds of religion, caste, sex, place of residence etc.

Article 19  Freedom of speech, association, assembly, movement, location of residence, and of career or occupation.

Article 21  Protection of life or liberty and no deprivation of this without due procedure established by law.

Article 22  Protection against and conditions related to arrest and detention.

Article 23  Prohibition of traffic in human beings and forced labour.

Article 24  Prohibition of child labour.

Article 25  Freedom of religion.

Article 32  Right to move the Supreme Court for the enforcement of rights conferred by the Constitution and the power of the Supreme Court to issue appropriate directions, orders or writs.

Part IV of the Constitution, the Directive Principles, assists the Court and the Parliament in guiding the development of the nation on democratic principles and in keeping with the aspirations of the
founders. The Directive Principles focus the State’s efforts towards securing some major Rights like:

**Article 39** Right to an adequate means of livelihood, common resources to be used for the common good, no concentration of wealth and the means of production to the common detriment, equal pay for equal work for both men and women, protection for children and the health of all.

**Article 39a** Equal justice and free legal aid.

**Article 41** Right to work, education and to public assistance.

**Article 42** Humane working conditions and maternity benefits.

**Article 43a** Living wages and participation of workers in the management of industries.

**Article 45** Free and compulsory education for children.

**Article 48a** Protection and improvement of environment and safeguarding of forests and wildlife.

The Supreme Court has the power, under *Articles 140 and 141* of the Constitution, not merely to interpret or explain legal provisions, but to enunciate new legislation/legislative principles where there is a ‘vacuum in law’. These unique enabling powers were vested in the Supreme Court to ensure better and more effective use of the law, particularly to meet the ends of ‘social justice, equity and good conscience’. **Article 141** goes a step further to ensure that any law declared by the Supreme Court is binding on all Courts in the country. In addition, **Article 226** confers powers similar to those of the Supreme Court on the High Courts. These powers can be exercised in the jurisdiction of the respective States.

The Constitution places on the State the responsibility of ensuring that the fundamental rights of every citizen are upheld and protected. It also vests in the Supreme Court the powers to interpret laws and Directive Principles in such a manner that equity and social justice are upheld. All public interest litigation, therefore, relates to disputes with the State on violations of fundamental rights, particularly of large
sections of citizens. However, it is left to the Supreme Court and the High Courts to interpret what constitutes the 'State', 'fundamental rights' and their 'violations', and what constitutes 'public interest'. There are no prescribed definitions, and accepted concepts have evolved through the years through 'case law' (rulings in specific cases).

**Historically Conservative Role of the Judiciary and Socio-Economic Realities**

Despite these formidable powers, the Indian judiciary had functioned in a conservative mode for the first two decades after independence and was perceived as inaccessible to the poor and disadvantaged. Given the Supreme Court's jurisdiction over fundamental rights, one may imagine that the Court would be flooded with cases relating to violation of these rights. However, this was not the case until the late 1970's - the vast majority of Indians were, and indeed are, too poor and uneducated to access the Courts. Legal fees averaging Rs.2000 to Rs.10,000 are beyond the reach of most Indians, no matter how solid the claim. Although during the Emergency, the government initiated state-subsidised representation in criminal cases, and later in the post-Emergency period many lawyers offered voluntary service to legal aid schemes, these were, and still are, inadequate. The vast majority of the population has no real access to the Courts.

Further complexities of the situation were that awareness of legal rights was minimal in a largely uneducated population. Even among the educated, intricacies of Court procedures and technicalities of the law were a deterrent. Then there are socio-political complications, what Dr. Upendra Baxi terms "the compromise of appearances, aspirations and fears". The educated elite has drawn up a Constitution that aspires to social justice. But the ground reality reflects sharp divisions along lines of caste, religion, and regional and linguistic groups, entrenched in centuries-old feudal traditions and socio-economic hierarchies. Whether conferring egalitarian Constitutional Rights is merely a paper exercise under which the ruling classes are content to keep things the way they are as Dr. Baxi suggests, is a question that constantly needs to be asked to motivate changes. Attitudinal changes cannot be enforced legally, and PIL is part of the larger dynamics of attempting social change, using the judiciary as the agency.
Much of this was reflected in the Courts, which had been a force for conservatism from the adoption of the Constitution in January 1950 to the declaration of a state of Emergency in 1975. They had blocked the implementation of bills passed by parliament in keeping with the Directive Principles of the Constitution, one example being land reform and the redistribution of land. When the Court appeared to endorse the Emergency in all of its excesses, public respect for the judiciary reached an all-time low.

Emergency as a Trigger in the Transformation of the Judiciary

The state of Emergency declared in 1975 by the then Prime Minister, Indira Gandhi, is still fresh in most minds of that generation. It was a period that had virtually suspended all political and civil rights of citizens, the press was muzzled, officials and judges who dissented were transferred out of sight, and the judiciary appeared to be a mute witness... Until elections were called a year later in 1976, and the ruling Congress Party was voted out of power. The state of social and political flux in the post-Emergency period saw a revival of the judiciary in its attempt to re-assert its institutional credibility as the protector of people’s rights and in curbing excesses of the state.

There was a re-definition of roles of the ruling and opposition parties. For the first time since the Indian independence, the Congress Party, which had consistently been in the majority, was out of power. Several smaller parties which had until then been in the opposition were faced the task of forming a coalition and re-establishing public faith in institutions of government which had been seriously eroded. The general climate of rebellion against excessive control and authoritarianism by the state challenged accepted social practices and entrenched feudal domination. The post-Emergency judiciary had to make a great effort to re-establish its independence and credibility at a time when the very responsibilities and the authority of the state were in question, citizens’ rights were being asserted, and the line between the two was being defined. It was into this state of flux that the Supreme Court, in particular pioneering individual efforts by Justices P.N. Bhagwathi, V.R. Krishna Iyer, Pathak And Chandrachud, stepped in and opened the doors for social action litigation. This was done in two
ways. First by reinterpreting Constitutional provisions more liberally and thus expanding the scope and content of various fundamental rights. And second, by restating some of the accepted standards of justiciability by waiving, under certain circumstances, rules of procedure such as standing or locus standi (recognition by the Court to pursue litigation), prematurity (preventive and not merely compensatory legal intervention), etc. This was done with a view to facilitating the common man’s access to the Court.

The Court was careful to explain these radical departures from tradition. In the words of Justice Krishna Iyer, their concern was that ‘if the Courts cannot, or will not, give relief to people who are in fact concerned about a matter, then they will resort to self-help, with grave results for other persons and the rule of law.’ The Court found that the commitment of the Indian Constitution to social and economic justice would not be possible to achieve unless issues affecting the public at large could be brought before the Courts, and those oppressed by injustice could address the Court through a third party. In this process, the judges sought to shake off the rigid rules of procedure that long association with the Anglo-Saxon system of administration of justice had established, particularly in respect to Article 32, which assumed that only a person whose fundamental right is violated can move the Court. Since the Bhagalpur blinding case in 1980, the Supreme Court (and now, each High Court) has accepted public interest litigation petitions by lawyers or activists in their own names as representative of a group whose situation they are presumed to have closely investigated. The Supreme Court, appropriately, does not view the petitioners as the real parties in interests, but as public agents for those parties.

Judges, lawyers, social activists and media persons formed an informal nexus, exposing injustice and petitioning the Supreme Court and High Courts. It was recognised that something needed to be done, and the Courts were perceived as the only alternative, the ‘last resort’, before extra-legal action. Groups working for civil liberties and activist organisations concerned with the working and living conditions of people with meagre resources had gained strength in opposition to authoritarian tendencies in politics. Simultaneously, investigative
journalism began to expose injustices and these became the basis for many cases of PIL. Justice Krishna Iyer, while supporting the liberalisation of procedures, described PIL not only as the last resort for the disadvantaged, but as a legal mechanism to contain growing unrest. ‘We have no doubt that in competition between Court and streets as dispenser of justice, the rule of law must win the aggrieved person for the law Court and wean him from the lawless streets.’

Some landmark cases that exemplified this new judicial phenomenon in the late '70s and early '80s and were illustrative of social action litigation were:

- In 1978, a prisoner, Sunil Batra, filed a writ petition objecting to the torture of a fellow prisoner. The Court, lauding the involvement of a human rights organisation in an amicus posture, acclaimed the need for an activist judiciary for prisoners' rights cases.

- In 1979, Kapila Hingorani, a lawyer, filed a habeas corpus petition based on a journalist’s report of eighteen detainees who had been awaiting trial longer than the terms to which they could have been sentenced had they been tried and convicted. The Court undertook its own fact-finding through an appointed commission and discovered over 80,000 such prisoners. Ordering the sessions Courts to try the detainees’ cases, the Supreme Court was dismayed by their slow progress and ultimately ordered the detainees’ release and compensation.

- In 1980, local authorities in the town of Bhagalpur in Bihar State blinded thirty-three detainees, apparently to coerce their confessions. A newspaper journalist wrote a scathing expose, and a lawyer sent the Article to the Supreme Court. Justice Bhagwathi, who received the article, treated it as a petition by the sender, and the Supreme Court took what became known as “epistolary” jurisdiction over this case - the letter of the lawyer-petitioner was recognised as a petition seeking to have the Constitution’s guarantees of due process enforced for disadvantaged people. In the next few years, the Supreme Court ordered the state of Bihar to provide medical treatment for the detainees and pensions for their
families, and in subsequent hearings, monitored the rehabilitation of the victims.

- Relief for mentally ill women mistreated by their wardens, orphans being sent abroad for adoption and possible enslavement, bonded labourers, slum dwellers whose pavement shanties were razed in the name of city beautification, working conditions and pay of construction labourers... Once the Court’s doors were opened, there was a torrent of cases.

One case filed in the same period which was different in nature and was a precursor to include the Court’s jurisdiction over executive/administrative (mal) functioning was the highly political “judges’ transfer” case. In 1981, several bar associations sought successfully to expand the doctrine of standing for themselves. During the Emergency, judges who objected to its constitutionality had found themselves promptly transferred to far-off states. Waiting prudently until the Emergency was lifted and Indira Gandhi had been voted out of office, bar associations of various states filed petitions asking for the return of those judges. Although the transferred judges were capable of approaching the Court themselves, the Supreme Court concluded that the bar associations had standing to protect the public’s interest in an independent judiciary.

Thus, distinct social and historical forces that determined the issues for redress in India, as Dr. Baxi stressed, defined social action litigation. PIL as it emerged in India was to be a mechanism for social change, a means through which the problems of the poor could be resolved in the legal forum thus distinguishing it from PIL as a more general legal tool for all public interest issues.

In an attempt to keep the distinctions clear, the broad umbrella which included social action litigation and PIL, generated yet another term - public law litigation (PLL). PLL is essentially concerned with conflict resolution rather than resolution of private/individual disputes. In PLL, the interests involved tend to transcend the litigating parties and involved such questions as the proper exercise of power by the state or its functionaries and the scope of individual liberty. As in other
countries, the scope of judicial control of the legislative and administrative action gradually expanded - this was a necessity in welfare states where opportunities for abuse of power by the executive was greater, and a close scrutiny of discretionary powers by the executive was necessary. No PLL could really be concerned only with the litigating parties, and extended to the public at large. Every instance of public law litigation is concerned with the exercise of state power, limitations of this, or the rights of the people.

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<td>Public litigation (PIL)</td>
<td>US in the 1960s</td>
<td>Civic participation in governmental decision-making, representing “interests without groups” such as protection of consumer rights or the environment.</td>
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<td>Social action litigation (SAL)</td>
<td>India in the late 1970s.</td>
<td>Judicial processes made more accessible to the poor and disadvantaged sections of society, judicial protection of their human and constitutional rights ensured.</td>
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Despite the clarity of purpose in the early days of PIL in India, and the careful distinctions made, the diversity of cases that have been admitted as PIL prevents this legal phenomenon from being described in simple terms. Once the doors of the Courts were opened, it was difficult to restrict the cases to concerns of the poor and disadvantaged. Other movements such as those of consumer and environment protection also took root in the post-Emergency period of flux and questioning of the state’s authority. The lines between SAL and PIL (as representing “interests without groups”) began to blur as the huge range of issues raised and the lack of parameters defining “public interest” meant that any usable definition of PIL had to refer back to the cases themselves. As the growing number of cases filed as PIL show, the range of
concerns has necessitated that definitions of PIL be based, not on issues, but on procedural terms. This situation contradicts the initial hope that PIL and SAL would be synonymous, and primarily be concerned with problems of the poor.

Where PIL Stands Today

Public interest litigation, as operative now in India, has become an amalgam of PIL (as originally perceived in the US), SAL, PLL, and more recently, some consumer cases filed before the three-tiered consumer courts. The common thread running through all these cases, however, is that they are characterised by judicial activism and new rules of interpretation. Relaxation of procedural rules to facilitate access, however, has stabilised at the initial norms. As the definition of success in a PIL petition in India has had to reach beyond Court orders to changes in the ground realities, increasingly, it is cases which have mobilised PIL for general public interest issues that have achieved some real successes. Environment, consumer protection, governmental accountability, urban planning and misuse of public spaces and the conduct of examinations are some examples of cases that have seen success - and these relate to "civic" issues rather than to issues of direct concern for "the poor".

This brief outline of the concept and development of public interest litigation provides a backdrop to the specific cases narrated. At last count (31 December, 1996), judgements have been passed on 328 cases of PIL filed at the state High Courts and the Supreme Court. Add to this the number of PIL cases pending before the Courts, those filed but not admitted, appeals and cases filed after 1996, and the number of PIL cases entertained by the Courts would increase dramatically, perhaps more than five-fold. These cases come under such diverse topics as:

- Prisons and state institutions
- The police
- The armed forces
- Injustices specific to women
- Children
Labour
Bonded labour
Urban space
Environment and resources
Consumer issues
Education politics and elections
Public policy and administration
Judges, Courts and lawyers

Indeed, as citizens increasingly perceive the administrative and political wings of government as having failed them, they continue to turn to the Courts for remedy. Each new case has come up with new interpretations and definitions of what constitutes the ‘state’, ‘fundamental rights’ and ‘public interest’ and new dilemmas have arisen. Is the judiciary encroaching upon the jurisdiction and powers of the legislature and administration of government, or is it merely acting as a medium through which the excesses of these wings of government are checked, and they are held more accountable? Are there contradictions within different levels of the judiciary in interpreting PIL? Has PIL been instrumental in effecting systemic reform or changes in ground realities, or are there problems of implementation? Are both petitioners and the judiciary using PIL for ulterior motives? These are some questions that need to be examined in order that PIL matures into a more balanced and effective process.

Ground Realities

Unprecedented demands and pressures of the increasingly assertive public advocacy groups have led judges, lawyers and legal experts to re-examine the limits of judicial intervention, particularly in relation to political and administrative functions, given the possibility that there may be a serious ambiguities about what constitutes “public interest”. The mass production of rights through PIL has resulted in heightened expectations that judges are available to provide relief from all miseries, and there is a real danger that the gap between what is promised and performance will widen, causing confusion, frustration and disenchantedment. Discussion and analyses are no longer centred-around
recognition of PIL as a judicial phenomenon, but on the urgent need to arrive at a consensus to statutorily define PIL and establish uniformly applicable procedural norms.

In order to view developments in PIL objectively and identify criteria to make it more effective, one has to take into consideration some factors that have emerged as realities in the experience of PIL in the past two decades. These are:

- Redress of grievances of the poor and victimised depends largely on the initiative and power of social action groups or public-spirited citizens to initiate and sustain PIL. Dependence of victim groups on the professionals and the elite constitutes one of the main weaknesses of PIL. How strong is this contact, and how faithfully do the intermediaries reflect the real concerns of the affected?

- There is a real danger of PIL being misused for corporate gain, political advantage or personal interest, and this requires constant judicial scrutiny.

- With experience, and concern about the costs of complying with remedial orders Courts are likely to pass, state governments and government agencies have begun to actively oppose PIL petitions with legal manoeuvring and stonewalling the implementation of orders.

- In 1996, there were attempts by the central government to introduce legislation imposing monetary restrictions on the use of PIL. It was proposed that a sum of Rs. 1 lakh or 50,000 be deposited with the Court, to be refunded only if the outcome was in favour of the petitioner. Public outcry about the unfairness and unconstitutionality of such a move which defeats the very purpose of PIL of making justice available to poor, saved the day. But this attempt was indicative of the urgent need to protect PIL by developing an acceptable framework, criteria and safeguards.

- After the retirement of Justices Bhagwathi, Krishna Iyer, Pathak and Chandrachud, more conservative judges to the Supreme Court are
concerned about the volume of PIL cases and are cautious about admitting them. There appears to be a need for sensitising lawyers and judges to the objectives and methodology of PIL to counter a danger of apathy and cynicism.

☐ As has been observed, there has been a shift from the early intention of PIL to protect the fundamental rights of the poor and disadvantaged, to issues of general public interest. A general analysis of PIL points in this direction.

**Strengths of PIL**

Despite these developments, there are many positive aspects of PIL:

- PIL is still an effective, productive, and relatively easy way to focus an issue. Although these very cases could be addressed in other agencies where procedures do exist, PIL is preferred because of endemic problems of delay, obstructive procedures, high costs and lengthy process of appeals in these agencies.

- Although the ‘floodgates of PIL’ have been opened as apprehended by many, attempts are being made to cope with the volume.

- The relaxation of locus standi is well established and accepted at the level of High Courts where most PIL is now admitted.

- There have been many instances where final orders have been speedy in delivery and implementation, bringing about a real change in the situation. The case on guidelines for telephone services and that on filing of tax returns by political parties are two such instances. Another is the protection of the park in Jayanagar - it took just 4 months for the Supreme Court to give a final ruling.

- Through case law, some criteria have been developed for PIL, which are recognised and applied, thus beginning the process of defining parameters.
<table>
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| Public interest Litigation as currently Understood and used. | ⇒ PIL is intended for enforcing the fundamental rights of citizens specified in part iii of the Indian Constitution, but not for resolving private disputes of individuals.  
⇒ It is particularly intended to address concerns of the poor, ignorant, and otherwise socially and economically disadvantaged people who are not in a position to protect their own interest.  
⇒ PIL can be also be filed when:  
  ■ There is a necessity to enact new laws in order to avoid exploitation.  
  ■ Judicial intervention is necessary to protect democratic institutions.  
  ■ Administrative decisions related to development are harmful to the environment and endanger people’s right to natural resources such as air or water.  
  ■ Issues of wider general concern affecting large classes/numbers of people.  
⇒ Any member of the public acting bona fide with no motives of personal gain, private profit or political advantage can file a PIL petition.  
⇒ Such a petitioner can move the Supreme Court or High Courts for relief under Articles 32 or 226 of the Constitution. |
Drawbacks of PIL

It has been the experience of the practitioners interviewed that PIL is not always an easy or smooth path to tread. There are limits to the extent to which the law and legal apparatus, even if they are well disposed, can enforce duties, protect rights and secure redress. Law cannot enforce factors such as habits, attitudes and modes of behaviour, which are indispensable to decent social life and dignity of citizens. PIL rarely brings about attitudinal changes, and in many instances is largely a fire fighting mechanism limited to specific issues and instances. Political interests are increasingly playing a major role – executive decisions manage to circumvent favourable Court orders, as in the STR project case, and the ground realities are not altered. NGOs need enormous manpower, technical and financial resources to sustain the campaign.

Other drawbacks are:

Petitioners face enormous difficulties in getting information. With no statutory Right to Information and Courts that may or may not institute an inquiry, there is great difficulty in ascertaining the facts at issue. The initial euphoria of letter petitions has given way to the necessity for well-documented briefs that require a high level of commitment from social action groups and lawyers.

Rigidity of rules of evidence and procedure is increasing, as judges become wary of charges of arbitrariness and misuse of PIL. The consequent delays in verdicts and the long wait for the resolution of cases make many judgements academic. Final orders can take anywhere between a year and fifteen years to be passed. Unless an interim stay is granted to prevent further deterioration of the situation, the final judgement may end up becoming an academic resolution rather than bring about any real change in the situation.

There are failures of implementation and limitations on the extent to which Courts can force public bodies to implement specific plans in response to public grievances. While many favourable judgements arm the citizen with a statutory right or directions for implementation, it is difficult to monitor on an individual basis whether these are indeed being followed. As in the case of blood banks, or pensioners or
consumer Courts, it is an on-going dynamic between the implementing agency and the petitioners to ensure compliance with the Court’s order. For example, while most pensioners automatically received the revised pensions, others have had to file contempt-of-Court cases and the battle continues in several such cases. Similarly, in the case on the functioning of consumer Courts, there will be no point in time when these will be functioning as they should, and the onus would be on consumer organisations to continuously monitor the situation and to seek remedies.

Most of the petitioners/organisations do not have any active feedback system to monitor the implementation of judgements or gauge the impact they have at the ground level.

There is unwillingness on the part of Courts to punish those guilty of contempt of Court in not carrying out orders in a large number of PIL petitions, despite having powers to do so. Increasing, judges are becoming wary of assuming executive and legislative powers, and revert critical decisions to government agencies against which the case has been filed. Even favourable Court orders in such cases become “weak and insipid”, bringing little substantial change in the situation.

Courts are conservative in awarding costs to PIL litigants even when the resources of the adversary are huge. It therefore becomes a financial burden for genuine activists and lawyers to file cases. Mr. Shourie, who lives in Delhi, appears in person at the Courts and has a network of colleagues and friends willing to assist, and is able to handle a case for as little as Rs. 2000.00. On the other hand, it costs CERC anywhere between Rs. 50,000 to Rs. 2 lakhs per case. Citizens’ groups have had to spend between Rs.2000 to Rs. 10,000, including appeals to the Supreme Court. Until now, they have been able to raise the funds needed through collections. Although lawyers and other professionals may give their professional services without charging, there are considerable costs involved in gathering and dissemination of information, communication, transport etc. Travel costs and professional fees of lawyers (which currently range from Rs. 50,000 to 1 lakh) make litigation at the Supreme Court prohibitive for those not based in Delhi. While established organisations such as CERC can absorb these costs with some difficulty, others suffer if no costs are awarded. There is the
occasional exception such as costs of Rs. 20,000/- paid to CC by the government in the case on the maintenance of accounts by political parties. But these instances are indeed very rare.

Even those lawyers who do these cases *pro bono* (without charging fees) are increasingly difficult to come by - the work is 'back breaking' and few people want to do it. Only senior lawyers with back up facilities can afford to take this on, junior lawyers having to make a living find it near impossible.

There may be divergent interests even among claimants - for example, some slum-dwellers may want to take a compensation and move, while others may want to stay on and fight for better basic facilities.

PIL is a gamble, and the fate of the case often depends on the judge before whom it is posted. Judges' predisposition affect rulings. Some biases observed by practitioners are treating nationalised organisations as "holy cows", wanting to be seen as 'pro-poor', against landlords, women, etc. Many lawyers are disheartened that PIL has become highly individualistic and attention seeking.

As more and more PIL cases are being filed at state High Courts under Article 226, judges become more susceptible to the influence of local economic and social powers.
As has been observed, ground realities have changed considerably since the heightened social activism by the judiciary of the late '70s and early 80's. Today, citizens' organisations have increased in numbers, maturity and professionalism. There is a flood of PIL petitions and strident reaction from the legislative and executive branches of government about usurpation of their powers is increasing. Resources, infrastructure and technical expertise to cope with the wide range of complex issues on which PIL petitions are being filed, are inadequate. Systems for screening legitimate or critical PIL cases are weak. PIL has become a double-edged sword, as prone to misuse by petitioners for settling private scores, as being an important tool for upholding democratic norms and giving citizens a voice. This overload on the judiciary has generated attitudinal differences among the judges themselves about how to respond to PIL. And yet, the broader situation remains the same – the legislative and executive agencies of the government continue to default on their responsibilities, levels of corruption and misuse of powers continue to rise, some of the best and well-intentioned laws of the country continue to be violated in implementation. Only the methods have become more circuitous. Having tried every other avenue of redress, citizens continue to perceive the judiciary, however overloaded, as their last hope of accountability and corrective action.

In an attempt to get a view from the other side of the Bench, four judges were interviewed - two with an extensive record of having adjudicated PIL cases at the Supreme Court, and two with similar experience at the Karnataka High Court. What are current attitudes to PIL in the judiciary? What are the pressures under which judges are responding to PIL and are they reverting to a more conservative role for the judiciary? What determines why one case is admitted and not the other? What can petitioners do to better their chances of a favourable judgement? Some of these questions are answered in the responses of the judges interviewed.
Key views expressed by judges are:

PIL concerns only the higher judiciary and as of today, as much of the hostility to PIL comes from within the judiciary as from the executive and legislative branches of government. There is a strong degree of hostility to PIL because it has increased the load on the Courts enormously and the judicial system is simply not equipped to deal with the magnitude, complexity and balancing of concerns that PIL requires it to do.

- The situation could be improved if innovative means are used to simplify the procedures and laws. But there is little initiative to do this – judges are set in the conventional pattern of working, and lawyers are largely interested in prolonging litigation regardless of clients’ interests. The courts are, therefore, hopelessly overloaded and PIL comes to be treated as a nuisance factor.

- There are several reasons why PIL is treated as a nuisance factor:
  - The level of inaction and misuse of power is rampant and virtually no redress machinery other than the courts functions reasonably effectively. There appears to be no option but to address the courts directly. The inevitable result is a deluge of appeals and the courts have no option but to be defensive.
  - There is no effective mechanism in the Supreme Court and High Courts to scrutinise PIL cases. Some High Courts, such as the Bombay High Court, have set up a scrutiny cell with the Registrar looking into the really valid and important cases. Many of the cases examined were individual and frivolous cases. But even with weeding out by a scrutiny cell, the number of cases is very large. If courts were to entertain all the valid cases, at least fifty per cent of the judiciary’s time would be spent on PIL, and this is not possible. When the courts get complaints, at least 70 per cent of the cases do not qualify for PIL. The danger of this situation is that it creates a mind-set in judges to throw out anything filed as PIL, even genuine cases.
  - There is a worry that PIL could be, and is increasingly beginning to be, misused for private interests. An informal analysis of PIL
cases filed in the Bombay and Karnataka High Courts showed, that of the 70% of the cases, that did not qualify as PIL cases, 10% were downright false. Busybodies who are not really concerned about issues and have done no background work on the issue, but file seemingly genuine cases and waste the court’s time, filed another 10%. 10% of the cases are motivated, with causes taken up and magnified in order to get publicity and mileage out of the situation. And in the past ten years, there is a new category of mala fide cases amounting to professional blackmail. For example, if a large plant is to come up somewhere, these people will file a PIL challenging this and prolong the process so that the delay becomes expensive for the promoters. An agency spending crores on a project will pay a few lakhs to stop the agitation and buy peace. This has become a regular racket and judges are aware of it.

- There is a strong tendency in the country not to make use of several channels statutorily available as alternate remedies. There is a growing tendency to take the easy way out of having to writing letters to the authorities concerned, sustaining pressure, engaging lawyers etc. A PIL petition is filed so that the Courts do all the investigation. Citizens get out of cumbersome work by saying “nothing will come out of it, and get straight into a PIL petition, expecting the Court do their work for them. This is also a form of misuse of PIL.

The above factors show why the judiciary has turned hostile. But the critical point is that PIL is an important and necessary avenue for legal redress. There is a reaffirmation of the importance of PIL as a necessary tool for social justice and accountability in government.

- PIL cases attract a lot of media attention, few judges are sympathetic to PIL, and a judge who entertains PIL cases is invariably labelled as publicity-hungry. There is really no answer to this charge except to make a discerning examination of orders passed in PIL cases, especially by judges like Justices Chinnappa Reddy, Kuldip Singh, Krishna Iyer, Bhagwati, etc. If one takes a cross-section of PIL cases in the past 24 years and examines
whether the orders passed are justifiable, or whether they were passed only to indulge in sensationalism, it would be seen that they have been demonstrably for the public good. Hard facts and statistics show that PIL has played an extremely important role.

But even the thirty per cent of PIL cases, which are genuinely in the public interest, are a heavy load on the working of the Courts. The judiciary has two clear-cut ways of dealing with this.... Attempting pre-litigation scrutiny, and rejecting PIL petitions as a matter of course. The latter is a recent tendency that is disturbing. An informal assessment shows that between 1986 and 1996, the success ratio of PIL cases, in that they were considered genuine and entertained by Courts was as high as 78%. But in the past three years (1996 to November '98), the failure rate of PIL cases is 97%. PIL cases are being routinely dismissed in many High Courts. The Supreme Court has also become cautious. This change has come about because of the factors detailed above. Once such negative trends are set, it is difficult to reverse them since it is difficult to effect administrative, systemic changes.

There are however, some broad solutions to the problem:

Safeguards need to be developed against misuse of PIL. It would assist judges greatly if there was effective scrutiny of PIL cases brought before them. There is a necessity to establish a uniform system with competent persons to weed out misuse of PIL. Each High Court should set up an effective scrutiny cell with its own officers and some of the better lawyers as part of its legal services. Parties wanting to file a PIL case should be required to send their case in the form of a letter for scrutiny by this cell before it can be entertained as litigation. Blackmailers file cases straightaway, they don’t want scrutiny.

This will bring two benefits - a good deal of weeding out will take place and the workload and time lag will be reduced dramatically. This scrutiny cell would have to carefully examine the supporting documentary evidence and advise the complainant accordingly. It could also call for a response from the party against whom the complaint is made - in almost 50% of such cases, corrective action is taken automatically upon receiving such a communication.
It would also assist judges if PIL petitioners exhausted all other avenues of alternate remedies before coming to the Courts. When they do approach the Courts, their arguments should be prepared and substantiated well.

If PIL cases go through this process and still come up before the court, swift and effective orders which act as a deterrent must be passed. If this is done, the entire volume of PIL petitions will go down since corrective action will be taken at the initial stages in fear of consequences should the petition reach the court. For example, in all cases of illegal constructions, demolition must be ordered. Today there is a confidence that one can get away with a fait accompli. An analysis of the quality of orders passed in PIL cases show that they are weak and insipid. Only 10 to 20% of the issues are completely redressed, the rest are ineffectual and a total waste of the court's and complainants time. People get away with doing nothing for weeks and months despite court directions, by which time the cause of action had died out. The fait accompli argument should not be accepted in PIL.

The quality of orders passed are extremely important - misuse of power and corruption have reached such high proportions because today there is a confidence that even if a person is hauled up, he/she will get away unscathed. It is also important to be innovative in passing orders so that they are effective. For example, in the case where prisoners were blinded while in custody, the compensation of 1 lakh ordered must be recovered from the people who did it, not the state.

Almost all judges pass orders and forget about it - it is left to the petitioner to keep coming back to Court for non-compliance. After several such attempts, he gives up hope and gives up the cause. Orders must identify the authority by the person required to take corrective action. If responsibility is fixed on specific officials, a time-frame fixed and punitive action that is an effective deterrent taken, it will go a long way in bringing about accountability in public life. This is a small change, but it requires judges to take follow-up action, which is not conventionally within the role of law. This is an extended role that Courts will have to take in order to make PIL effective.
Adjudication of PIL requires innovation. There should be discussion and orientation of judges to the legitimate uses of PIL. There needs to be greater confidence in the judiciary to address cases where there are clear violations of executive powers. An orientation process for judges is required but 95% of the judges are unresponsive, with the attitude that judges cannot be told what to do. There are some small efforts in this direction, and the initial response is not bad, but there is still a long way to go.

Twenty years ago socio-political factors generated a tremendous enthusiasm and hope in PIL as an answer to neglected social, environmental and other issues concerning the majority of citizens. Justices Krishna Iyer, Bhagwathi, Pathak and Chandrachud were commended for their social responsibility and heralded as innovators in the judiciary. Today, as ground realities have caught up, the few judges who are responsive to PIL, are described as “brash, with no time for legal and procedural niceties”. It is only natural that as the sheer volume and nature of PIL cases multiply, this judicial phenomenon has matured and come to turns with reality. It is not surprising that in attempting to reach greater balance, judicial responses to PIL tend to revert to a more cautious and conservative mould. However, as with every reaction, there is also a danger of the necessary and important aspects of PIL being seriously diluted or negated.

The description of current dilemmas facing PIL and some of the answers to these have largely come from the judges themselves. Although it is clear what needs to be done, how to do it is a delicate matter. The question now is to identify the specific mechanisms needed, and how these will be put into place.
While current judicial responses to PIL are not very encouraging, PIL is uniformly viewed as important and necessary. As citizens perceive the administrative and legislative branches of government as having failed them, and when all other methods of advocacy and dialogue have failed, more and more people approach the Courts. The judiciary still bears, and acknowledges, the responsibility of being the final arbiter of Constitutional rights and values. The system may not work as it should, but it is recognised that PIL has a life of its own, is here to stay, and its impact on the judiciary is unquestionable. Even under current constraints, the experiences of practitioners show that there are some cases and situations in which PIL has brought about positive changes at the ground level. Used judiciously, PIL can be a potent tool of advocacy. The challenge ahead is to learn from past experience, examine the parameters of PIL and develop mechanisms to make it work better towards fulfilling its original objectives.

PIL cannot be viewed in isolation, but as an important factor in the wider context of advocacy campaigns. Apart from the issue and arguments reflected in the litigation itself, there are many contextual factors conducive to PIL and its effectiveness. Equally, there are factors that indicate that PIL may not be the best option in the circumstances. Strategies such as capitalising on the public mood, gauging the juncture at which litigation would be appropriate, and framing the issue accordingly, increases chances of favourable orders. Litigation is not always identified as the first course of action. There are instances where research on the issue, dissemination of information through the media and other means, sustained action and representation at all available forums, have provided the run-up to litigation. There are other instances that have captured dominant public mood and catalysed action through litigation. One example is the case on filing of tax returns by political parties, which reflected the public disgust at political functioning, and supported the initiatives of a dynamic Election Commissioner attempting electoral reforms.
Strategies for success in PIL

The case studies narrated give us several insights into strategies that could positively influence the outcomes of PIL. There are several common elements that run through the cases, but it is not necessary that all of them be employed all the time in every case. It is important to have one’s sights clear on what the expected resolution of the issue is, and develop strategies accordingly. The practitioners interviewed have shared their observations and experience on what improves one’s chances for success in PIL. These are:

☐ Preparing the ground and creating a public climate favourable to the issue.

☐ Deciding if PIL is the most desirable and feasible strategy.

☐ Devising a petition strong on facts and arguments.

Preparing the ground...

Wherever possible, it is important to prepare the ground for litigation. Highlighting the issue, generating sympathetic public opinion, and creating a demand for accountability from the concerned authority can do this. Some actions taken before litigation are:

Research and information on the issue. Using a variety of sources such as media reports, research studies and official documents of the government, examples and parallels in other countries, conducting one’s own research studies and information provided by network partners, the first step is to prepare a brief on the issue. This basic information helps understand the issue and formulate one’s own strategy internally. It is valuable for public information, representations, and eventually, litigation. It also helps in framing the issue and giving it a human face, so that different players connect with the issue at a rational and emotional level. The methods of collecting data range from the sophisticated to the simple. Mr. H.D. Shourie’s favourite technique is writing letters to the editor in national dailies, calling for information from any affected person. Using the 13,000 letters he got from pensioners, he was able to highlight the enormity of the situation. And in the case of consumer Courts, he was able to tabulate information
pertaining to different states in the country on the number of cases filed, the number resolved, time taken, pending cases, etc., graphically and dramatically supporting his argument. CERC has an excellent library with access to material from abroad. It has also developed a pool of technical and professional resource persons willing to contribute their expertise. The voluntary organisation Samagra Vikas has a strong network of highly qualified and dedicated professionals.

Sensitising the public and authorities to the issue by publishing research findings, media coverage through reporting of research findings, representations, etc. Consumer Education and Research Centre, Ahmedabad, is in regular touch with columnists such as Pushpa Girimaji and Shirish Deshpande who report on consumer issues. Another noted journalist, Shahnuntala Narasimhan, is on board of trustees of CERC. Prominent citizens in Bangalore supported preservation of open spaces in public talks.

Networking. Initially, CERC filed the cases on its own, but soon started networking with other organisations. One example is the involvement of Mr. M.R. Pai of the Bombay Telephone Users Association in the case on procedures for billing and fault repair in telephone services. Similarly, almost all consumer organisations assisted Mr. Shourie in gathering data on consumer courts since there was a common stake in the case. Networking optimises resources and broadens the constituency. Citizens' groups in Bangalore lent support by being competitors in a case.

Representations before petition committees and raising questions on the floor of both houses of parliament and the state legislature. This is a technique used frequently by many organisations, and which is frequently used by CERC. Legislators sympathetic to the issue or having the issue on their agenda are given full background information. Questions are raised in zero hour, and efforts are made to have the responses reported.

Optimising resources. It is the experience of some practitioners that there is a general climate of support and sympathy to issues of public interest - and Courts are normally sympathetic to citizens' issues, professionals are willing to help. Many professionals such as chartered
accountants, academics, lawyers, etc., Are willing to give their services free of cost for a public cause, and others, because they are personal and professional acquaintances of the practitioners. However, it is important to acknowledge the demands made on a person’s time and effort, and optimise this assistance. This can be done by:

- Collecting required information and preparing the preliminary brief.
- Identifying skills required and appropriate persons who can help, and giving specific tasks/requests related to the person’s area of expertise and resources, so that demands on the professionals are not unreasonable.
- Structuring meetings effectively and preparing for them, and so that resource persons’ time is efficiently used and the number of meetings necessary is reduced.

**Gauging whether PIL is the most effective strategy...**

PIL is considered as a last resort after negotiations, mediation and dialogue have failed, since it is costly and time-consuming, the response is rigid and adversarial, and rarely is interim relief granted. PIL has largely grown because normally, there are two limitations governing most issues - lack of adequate statutes and therefore absence of statutory rights and remedies, and lack of information.

Generally, PIL resorted to when:

- **The time factor is critical and relief is needed immediately** - as in the petitions on pending criminal cases, safety of asbestos workers, preventing a sports complex from coming up in space designated as an open space, preventing unauthorised buildings and structures from being built. The Koramangala case on demolition of illegal flats is a good case at hand - it is difficult to get a demolition order once a building has come up - the stakes are too high on both sides. Conversely, timely litigation on the temple annexe strengthened the hands of the BCC commissioner, and he was able to demolish the illegal construction.

New principles or interpretations of law are being sought - the petitions on the right to reply, insurance cover for all, and the increase in bus
fares, are some examples. Indeed almost all the cases have sought to define concepts such as fundamental rights, the state, and public interest in a manner that these definitions concur with the aims and objectives of the Constitution.

Accountability is demanded of the administrative and legislative branches of government - the petition demanding that political parties file income-tax returns, and those on the regulation of blood banks, the functioning of consumer Courts, guidelines for billing in the telephone service reflect this aspect.

A single judgement can act as a lever to significantly alter the lives of large numbers of people - the case on pensions, asbestos workers, pending criminal cases, and indeed, almost all instances of social action litigation are examples of this.

Citizens want to participate in and monitor the management of their localities. Almost all civic issues such as basic services, protection of open spaces and building codes and neighbourhood maintenance belong here, as illustrated by the cases filed by community groups in Bangalore.

Every other advocacy and negotiation effort fails - except in cases where immediate stalling of an irreversible action, particularly a government one, is necessary, or immediate relief is necessary, almost all practitioners have resorted to PIL only after having exhausted all other avenues of advocacy.

Factors that strengthen PIL...

All considered, if it is assessed that PIL is indeed the best strategy under the circumstances, some methods that may assist a petitioner in adding weight to a PIL petition are:

- Establishing bona fides and locus standi of the petitioner(s). In most cases the petitioners were careful to establish their credibility by citing their statutory recognition as registered non-political, non-profit voluntary organisations, the history of public causes taken up by them and the bona fides of the nature of public interest in the case. In CERC’s case against LIC, the Court noted that the
petitioners were not seeking any direction in their own favour demanding that LIC give them insurance cover, but that they were seeking to have restrictive clauses removed so that this facility becomes available to everybody. Similarly, in the Jayanagar park case, although the petitioners were individuals and not a registered body representative of a larger group, the Court did not question their locus standi. We do not have to look far for the reason - they were the only ones demanding that the land be kept as a park, and had no ulterior motives or vested interests.

Developing a clear line of argument substantiated by technical and factual information, detailing the relief sought and suggesting remedies, stands a better chance of gaining the Court’s attention and sympathy than one which merely states the issue. Giving examples and parallels in other countries; citing case laws to strengthen one’s arguments and definitions; conducting research studies and citing the findings of these and other studies and official documents, and avoiding jargon are some methods of doing this. For example, CC cited schemes in other countries, notably in the UK, where an act of Parliament brought parity to all pensioners, similar to the relief sought in its case. In its case on increase in bus fares, CERC demonstrated that it was possible to apply the concept of inter-firm comparison to determine levels of efficiency in a public service. Conversely, the Koramangala sports complex case tried to resolve too many complex issues by filing one case.

Providing support to the lawyers. Although CERC develops a case exploring imaginative and effective uses of the law, each case is cross-checked with other practising lawyers on matters of litigability etc. One cannot jump into PIL unless the required professional homework/research is done. Lawyers will not and cannot do this. CERC provides this research resource prepares the briefs. The ownership of the case belongs to the persons taking up the cause, and they must give all necessary inputs and be in control of the direction that it needs to take. Similarly, CC provided detailed analyses on the functioning of consumer Courts in its case. Observations and judgements in over fifteen cases were identified by CERC to argue that LIC could be defined as the
'state', and that violation of Constitutional rights could be evoked as an argument in its case against LIC.

- **Enlisting allies in different walks of life.** CAG's first case on the "study tour" related to the National Games was successful only because they were able to gather information through alternative sources when the government refused to give this information. Officials who need strategic intervention by citizens' groups to free them from political interference, prominent citizens whose voice is heard, professionals who would be happy to give their services to a good cause, school children, friends and acquaintances holding key positions... Allies are to be found everywhere, provided the cause is genuine.

- **Strategising effectively.** Petitioners should be clear about the expected outcome and strategise accordingly. In the case on the functioning of consumer courts, CC decided that it would be more expeditious to name only nine states as respondents to avoid judicial delays. In the case against illegal flats being built in Koramangala, perhaps there was inadequate emphasis on violation of fundamental rights in restricting the argument to violation of building laws.

- **Asking for implementable orders that can be monitored.** There are limitations on the extent to which Courts can force public bodies to implement specific plans in response to public grievances. Therefore in many cases, while a favourable judgement arms the citizen with a statutory right or Court directions for implementation, it is difficult to monitor on an individual basis whether this is being done. Both CERC and CC do not have any established feedback mechanism to gauge the extent to which orders have been implemented, particularly on orders with a wide national jurisdiction such as blood banks, safety in asbestos factories, prisoners under trial etc. On the other hand, cases such as the telephone guidelines, insurance and pensions have had immediate impact, as have those on the temple demotion and preservation of the park. The general rule of thumb is that the more specific and localised the remedy sought the better the
chances of monitoring its implementation. Life is made easier for the judges and remedies are granted quicker, if specific solutions are suggested after taking into consideration the constraints of all parties.

What to watch out for

While all the factors identified above improve chances of success in PIL, the converse is also true that there are some traps to be avoided. Considerable thought must be given to whether PIL is the best option under the circumstances because:

- **Premature use of PIL** may foreclose other possibilities of resolving the issues, shutting the doors for negotiations. PIL must be used with care, and is usually employed as the last resort, or for strategic reasons detailed above.

- **Poorly drafted petitions.** As S. Murlidhar, a noted Supreme Court lawyer observed, “a good cause can be lost if petitions are filed on half baked information without proper research, or by persons who are not qualified and competent to raise such issues.” There is the added danger that the rejection of such a petition may affect third party rights.

- **Conflicts of interest** among the petitioner and the “public” they represent - what one section of the public perceives as in its interests, may be perceived as detrimental by another. Rather than have these differences surface during litigation, thereby weakening the case, it is better to anticipate them and strategise accordingly.
## Strategies for success in PIL

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<td>■ Economic impact</td>
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<td>□ Sensitising the public and authorities</td>
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<td>□ Networking.</td>
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<td>□ Representations</td>
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<td>□ Optimising resources</td>
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<td><strong>II. Deciding if PIL is essential:</strong></td>
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<td>□ Time factor is critical</td>
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<td>□ New principles of law are sought</td>
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<td>□ Accountability of government is demanded</td>
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<td>□ Judgement significantly alters many lives</td>
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<td>□ Citizens monitor civic issues</td>
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<td>□ Other advocacy efforts fail</td>
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<td><strong>III Strengthening PIL petition:</strong></td>
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<tr>
<td>□ Establishing bona fides and locus standi</td>
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<td>□ Clear line of argument</td>
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<td>□ Support to the lawyers</td>
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<td>□ Effective strategy</td>
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<td>□ Enlisting allies</td>
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<td>□ Seeking feasible orders</td>
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Conclusion

PIL has grown from its nascent form as social action litigation, to encompass a wide spread and diversity - of issues, of practitioners, of strategies, of resources employed, of the magnitude of change in ground reality. Although the cases included here demonstrate a range from local issues to those of national impact, they are a small representation and are merely illustrative of operative factors that would apply to PIL in general. More recent developments such as the consumer courts, the National Human Rights Commission and the National Commission for Women provide alternative forums at which many cases that may have earlier been seen as appropriate for PIL can now be presented. Despite this, where issues of systemic reform and checks on the abuse of power by state agencies are to be addressed, the higher judiciary is still entrusted with the role of protecting fundamental rights and acting as a watchdog in checking excesses of the state. A more recent example of this concerns police reform. The Supreme Court passed innovative orders that virtually granted direct judicial supervision in a major corruption case involving the siphoning of public money by high officials and politicians. These directives ensure that investigating agencies are insulated from extraneous pressure by transferring superintendence of the investigation to an independent statutory body, removing blocks such as prior government permission for investigating corruption cases, involving an independent panel of lawyers in the investigation and requiring periodic reports to be published. This has prompted two public-spirited retired police officers to move the Supreme Court for implementing the 20-year-old National Police Commission’s recommendations on police reform. On the directions of the Court, a high level committee has been set up to examine how best the police can be insulated from extraneous and political pressures.

Despite the complexities, PIL still remains an effective advocacy tool within reach of concerned citizens and citizens’ groups. It is, however, necessary to recognise factors supportive of PIL, safeguards against misuse of PIL and ground realities that affect the outcome. Important considerations to be borne in mind in relation to PIL are:
It is important to determine whether PIL is indeed warranted, and that it is the best option under the circumstances – premature use of litigation could cut off other avenues of redress and lock up an issue in Courts for a long period. In order to avoid of charges of arbitrariness and misuse of PIL, judges are becoming strict in procedure. This could cause delays and if the damage has already been done, make many judgements academic. It is important therefore, to gauge whether PIL is the most feasible option, and seek interim directions in order to prevent the situation from worsening.

An issue that is researched thoroughly; an argument that is framed well; and remedies suggested that are clearly in the public interest, taking into consideration possible conflicting interests and ground realities - these make it easier for the Courts to stay above controversy and pass favourable orders. It is true that petitioners face enormous difficulty in getting information, but required information can be accessed through alternative sources. What PIL requires is a high level of commitment from social action groups, lawyers and other sympathetic professionals

It is critical to establish the locus standi - this lends credibility and invariably ensures that PIL is admitted and heard. Whether an individual(s) or a recognised organisation, where it is established that the petitioner is not seeking remedy for himself, but a public remedy for a class of persons represented by him, the Courts are more inclined to adjudicate the case.

There are several weaknesses in PIL – judges are unpredictable and could be dictated by their own whims and biases, or influenced by local powers. This can be countered, to varying degrees of success, by creating a public climate in support of the issue through the media and other means. This not only informs the public, but also brings pressure on the judiciary to resist other influences and act in the public interest.

Another drawback is that the impact of PIL is uncertain. The extent to which Courts can monitor the implementation of its directives is limited. Additionally, judges are unwilling to punish those guilty of contempt of Court despite having powers to do so. The situation is further compounded by the fact that most of the petitioners/organisations do not have any active feedback system to monitor the implementation of
judgements or gauge the impact they have at the ground level. It is important, therefore, for petitioners to develop in advance as part of the strategy, a strong network and continuing campaign for effective implementation of orders.

Yet another major consideration has been the costs involved in PIL. Courts are conservative in awarding costs to PIL litigants even when the resources of the adversary are huge. It could, therefore, become a financial burden for genuine activists and lawyers to file cases. The case studies cited in this publication show that costs incurred by petitioners vary. An individual petitioner may spend as little as Rs. 2,000, residents’ association up to Rs. 10,000, or a more established organisation, Rs. 200,000. While this does place a financial burden on the petitioner, each case study describes ingenious ways in which this obstacle has been overcome - optimising resources, door-to-door collections, networking, developing partners in professional, academic and technical fields, fund-raising events, etc.

There are still many questions and debates about PIL since there has been no codification of criteria and procedures, and power struggles between the different branches of government escalate. As each branch zealously guards its interest, the answers are mixed. Should PIL be codified or not? Legislators and bureaucrats would give a resounding ‘yea’ convinced that the wings of the judiciary need to be clipped. Citizens’ organisations would disagree with this, and the Courts would not abdicate their power too easily. Should the government make funding PIL mandatory, or enact a law that minimum costs should be awarded to NGOs regardless of whether they win or lose the case? Obviously it should, according to NGOs, while all other agencies would protest. While many such questions need to be addressed and PIL needs to be defined and established as a more formal procedure, there is general agreement that it is a necessary and healthy development in a democratic society.

There is enormous potential for making PIL a powerful force for social change. Attention to valuable lessons in the manner in which PIL has grown so far can strengthen its future impact. Clearly there is urgent need to redefine several aspects of PIL and institutionalise its operation,
thus reducing any possibilities of arbitrariness and confusion. A resource centre with the information, financial and professional strengths to develop PIL, and to monitor its impact through an effective feedback system would herald the millennium with a more responsive and responsible judiciary, for public interest litigation, with all its drawbacks, still remains a ray of hope.
References

I have made extensive references to, and quoted from, the following publications:


This publication is a valuable resource book for anyone wishing to make a more comprehensive study of PIL. Its two volumes document all reported and unreported cases of PIL from its inception in 1979 to December 1996. The cases are arranged in thematic chapters. Each chapter begins with an introduction to the problem, frames the issues involved, discusses the procedural aspects and indicates the contribution of PIL towards a resolution. The appendices are equally informative and include such information as:

- The Constitution of India
- Alternate Remedies
- Guidelines Set Up by the Supreme Court of India for Considering Petitions of PIL
- Guidelines on the Practice and Procedural Aspects of PIL, Including Preparing a Case, Drafting of Petitions, Court Procedures etc.
- A Glossary of PIL Terms.


3. Legal News And Views:

1995 - *Larger Public Good To Get Precedence Over Individual Interest* (Editor).

*Expand PIL Jurisdiction to Lower Judiciary* (Raghunath Patnaik, Utkal University).

*News Reports Not Adequate Basis For PIL* (Editor).
Transformation of Standing in Public Interest Litigation
(Susan D. Susman, Wisconsin International Law Journal).

1994 - Public Interest Litigation (Dr. Kamala Jain, Bhopal)

Public Interest Litigation: A Retrospect And Prospect.

Prashant Bhushan on Public Interest Litigation.
An Interview with the Editor.

4. Annual Survey Of Indian Law:
   1994 - Public Interest Litigation (S. Muralidhar)
   1993 - Public Interest Litigation
           (Parmanand Singh, Faculty Of Law, Delhi University)

5. A.I.R. Journal 1997: Legislative Restrictions on Public Interest Litigation
   - A Mockery of PIL. Dr. Vijay Chandra Tenny, Warangal.

6. Colombo News Times: Judges in the Role of Social Activists
   - Justice P.N. Bhagwati. 15.5.85

7. Publications by Consumer Education and Research Centre, Ahmedabad.


9. CHRI News, Volume 5, No. 7:

    Sakshi, New Delhi, 1996.
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