



PROMISES AND PERILS OF PUBLIC INTEREST LITIGATION IN INDIA

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I Introduction

SINCE EARLY 1980's, the Supreme Court of India has evolved a procedure, which enables any public spirited citizen or a social action organization to mobilize favourable judicial concern on behalf of the oppressed and victimized people and to raise matters of common concern arising out of bad governance and governmental lawlessness. The Anglo-Saxon model of adjudication was insisted upon observance of procedural technicalities such as *locus standi* and adherence to adversarial system of litigation. The result was that the courts were accessible only to the rich and influential people. The marginalized and the disadvantaged people continued to be exploited and denied human rights. The emergency period (1975-77) further witnessed the colonial nature of the Indian legal system. During the emergency period, the state repression and governmental lawlessness was widespread. Thousands of innocent people including political opponents were sent to jails and there was a complete deprivation of civil and political rights. The post-emergency period provided an occasion for few proactive judges of the Supreme Court to openly disregard the impediments of Anglo-Saxon procedure in providing access to justice to the poor. The judges also wanted to refurbish the image of the Supreme Court tarnished by a judgment¹ given during the emergency period, which had tacitly supported the repressive regime. Few proactive judges recognized the possibility of providing wider access to justice to the poor and the oppressed by relaxing the rule of *locus standi*. In the post-emergency period when the political situation had changed, investigative and activist journalism also began to expose gory scenes of governmental lawlessness, repression, and custodial violence, failure of

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1. *ADM Jabalpur v. Shiva Kant Shukla*, AIR 1976 SC 1207.



criminal justice administration, drawing attention of lawyers, judges, and social activists. Public Interest Litigation (PIL) emerged as a result of an informal nexus of proactive judges, media persons and social activists.

II Remedial jurisdiction: the early career

PIL was evolved basically to provide access to justice to the downtrodden, poor and the ignorant who due to lack of resources and knowledge were unable to seek redress for violation of their rights. The courts democratized access to justice by relaxing the rule of *locus standi*. Any public-spirited citizen could approach the court on behalf of the disadvantaged groups. Court's attention could be drawn even by writing a letter or sending a telegram. The judges also fashioned new kinds of relief under the court's writ jurisdiction. For example, the court could award *interim* compensation to the victims of governmental lawlessness or order rehabilitation of bonded or child labour victims or victims of police brutalities. Earlier cases also involved the judicial monitoring of state institutions such as jails, women's protective homes, juvenile homes, mental asylums and the like. Through judicial invigilation, judges sought gradual improvement in the management and administration of these institutions. This has been called as creeping jurisdiction.² New techniques of fact-finding were devised. In most cases, the court had appointed its own socio-legal commissions of inquiry or deputed its own officials for investigation including assistance of lawyers as *amicus curiae*. Sometimes, it took the help of National Human Rights Commission or Central Bureau of Investigation or experts to inquire into human rights violations or environmental degradation.

PIL strategy created a new kind of people-oriented social movement invoking judicial power for the emancipation of the poor and the

2. Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" in Baxi (ed.), *Law and Poverty : Critical Essays* 387 (1988). For a detailed analysis of the evolution and development of PIL, see Parmanand Singh, "Human Rights Protection Through Public Interest Litigation in India", 26 *Indian Journal of Public Administration* 731 (1999); Upendra Baxi, "The Avatars of Indian Judicial Activism: Explorations in the Geographies of (in) justice" in S.K. Verma and Kusum (eds.), *Fifty Years of the Supreme Court of India : Its Grasp and Reach* 156 (2000); also see Parmanand Singh, "Protecting the Rights of the Disadvantaged Groups Through Public Interest Litigation" in Mahendra P Singh (ed.), *Human Right And Human Needs : Theory and Practice* 305 (2008), Surya Deva "Public Interest Litigation in India : A Critical Review", (29(1) *Civil Justice Quarterly* 19-40 (2009).



oppressed people. In its early career, PIL focused predominantly issues of failure of criminal justice system. In the first reported case of PIL,³ seeking relief to the under-trial prisoners languishing in jails wherein the PIL proceedings resulted in the release of nearly 40,000 under-trial prisoners. *Anil Yadav v. State of Bihar*⁴ depicted the police brutalities. In this case, about 33 suspected criminals were blinded by the police in Bhagalpur jail in Bihar by putting acid into their eyes and then eyes were burnt. The Supreme Court quashed the trial of blinded persons, condemned the police barbarity in strongest terms and directed the Bihar government to bring the blinded persons to Delhi for medical treatment at state's expense. The court declared free legal aid as a fundamental right as an aspect of right to life and personal liberty. The human rights of prisoners subjected to torture, victims of police excesses, inmates of protective homes and mental asylums, bonded and child labour, victims of sexual harassment and many others have drawn the remedial attention of the court. PIL sought to enhance the accountability of the political class and the administrators towards unfilled constitutional commitment to social and economic justice. Earlier, PIL cases offered a new paradigm of human rights and created a new people oriented profile of judicial power. Voiceless and powerless people were emancipated from exploitation, brutalities and oppressions on the initiatives of others.

III Recognition of social and economic rights

PIL movements also promoted respect for social and economic rights. In *PUCI v. Union of India*,⁵ the Supreme Court not merely issued directions for the implementation of centrally sponsored poverty alleviation programme but went to the extent of appointing an expert committee to monitor the compliance of court orders within fixed time frame. In this petition, right to food was for the first time articulated as a guaranteed fundamental right. The court expressed its deep anguish about the increasing number of starvation deaths and complete breakdown of the system of food security despite overflowing food stock in the country. The court's order made food distribution scheme into entitlements without

3. *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81.

4. (1981) 1 SCC 622.

5. (2001) 7 SCALE 484.



accepting the plea of lack of resources.⁶ The activism of the court has made it clear that social rights can be the subject matter of adjudication and determination and enforceable by the court of law.

In a series of cases, the Supreme Court has addressed the issue of health care as a fundamental right and has imposed an obligation upon the state not only to provide emergency medical care but also to take all steps to create conditions necessary for good health, including facilities for basic curative and preventive health services. In doing so, the court has derived support from certain directive principles of state policy under the Constitution. In enforcing right to health, the Supreme Court has rejected the argument based on lack of financial resources. The court reasoned that even negative rights require economic resources. In *Paschim Banga*,⁷ the court held : “In the context of the constitutional obligation to provide free legal aid to a poor accused this court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observation would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life.”

The judicial activism in the phase of PIL movement had also recognized right to primary education as an aspect of right to life.⁸ The directive principle relating to right to education in article 45 has now become a fundamental right after a long struggle of the child right activists, educationists and social activists espousing the right to education, leading to an amendment in the Constitution in 2002 inserting article 21A in the Constitution declaring right to primary education for children up to the age of 14 years as a fundamental right. The right to elementary education has become a reality by the Right to Free and Compulsory Education Act, 2009.⁹ Now it is a legally enforceable duty of the centre and the states to provide free and compulsory education to children from six to fourteen years. The Act provides for 25 per cent reservation in private

6. The proposed Food Security Bill 2009 seeks to provide a statutory basis of right to food as it creates special entitlements of foodgrains up to 25 kg at a subsidized rate of Rs 3.50 per kg.

7. *Paschim Banga Khet Majoor Samity v. State of West Bengal* (1996) 4 SCC 37 at 48; also see *Vincent Panikurlangara v. Union of India* (1987) 2 SCC 165; *Murli S Deora v. Union of India* (2001) 8 SCC 765; ‘X’ v. *Hospital ‘Z’* (2003) 1 SCC 500; *Parmanand Katara v. Union of India* (1989) 4 SCC 286.

8. *Unni Krishnan v. State of A.P.* (1993) 1 SCC 645.

9. The Act came into force from April 1, 2010.



schools for disadvantaged children from the neighborhood. There shall be no donation or capitation fee for admission and no interviewing of child or parent as a part of the screening process.

It may, however, be clarified that though the judiciary has recognized various social rights by reading directive principles into fundamental right to life, the responsibility of implementing these principles still remains with the state. The judges cannot force the government to open more hospitals, schools, distribution of nutritional needs, and more provision for housing and so on. In recognizing social rights to health, shelter, education, and means of livelihood, the judges have, however, performed a formidable task in bridging the gap between civil and political rights and social and economic rights and have reinforced the concept of indivisibility of human rights.

IV Courts as institutions of governance

Since the other branches of the state have been facing crisis of credibility due to growing decline of public morality, people utilize PIL seeking corruption free and honest governance. Over the years, the focus of PIL cases has drifted from issues of human rights to the issues of public accountability and governance. Through PIL, the judges have unearthed 'scams' where bribes were given to high profile politicians and bureaucrats through "*hawala*" in return for favours in the grant of government contracts, exposed cases of political corruption and abuse of power in distributing state largesse. People raise issues of governance before the courts as other avenues of redress of grievances have become ineffective and unreliable.

PIL has generally been perceived as a success in providing access to justice to the poor and the downtrodden, while others have sought to condemn the PIL movement, often with the specific charge that it has caused the judiciary to usurp the powers assigned to the executive and legislature and thus disturbing the doctrine of separation of powers. The courts have given directions as to how blood should be collected, stored and given for transfusion free from hazards, how to impart knowledge about environmental protection, how the children of prostitutes should be educated, how the CBI should be insulated from extraneous influence while conducting investigation of corruption against persons holding high offices, what procedure should be adopted and what precautions should be taken while allowing Indian children to be adopted by foreign adoptive parents, what guidelines should be followed to prevent sexual harassment of women at workplace and how to prevent noise pollution by



loudspeakers and fire crackers, how to design the reservation and educational policy and so on. On December 10, 2007, the Supreme Court came down heavily on judicial activism, warning judges that they must exercise restraint or else politicians may curtail their independence. The bench comprising A.K. Mathur and Markandey Katju JJ had taken strong exception to Delhi High Court's intervention in cases like nursery admissions, free beds for the poor in hospitals, misuse of ambulances, begging in public, blue line buses, unauthorized construction, monkey menace, road accidents, *etc.* According to the court, these were matters pertaining exclusively to the executive and legislative domain. If there is a law, judges can certainly enforce it, but they cannot create a law and seek to enforce it. Judges must know their limits and must not try to run the government and act like emperors.¹⁰

V Expansion of the concept of justiciability

The court's growing engagement with issues of governance has encouraged people to invoke PIL jurisdiction on any conceivable matter of 'public interest'. Consequently, the concept of justiciability has been expanded today to such an extent that one can invoke article 32 jurisdiction (which is intended to be used to enforce fundamental rights) to challenge the constitutional validity of a law setting up private universities,¹¹ a law dealing with deportation of illegal migrants,¹² the legality of the dissolution of state legislative assembly under President's rule,¹³ questioning the induction of tainted ministers in the union cabinet,¹⁴ or asking the removal of a bureaucrat with tainted reputation.¹⁵ PIL has been filed for better service conditions of subordinate judiciary,¹⁶ for enforcing ban on smoking in public place,¹⁷ for controlling noise pollution during festivities,¹⁸ for checking ragging in the universities,¹⁹ for electoral reforms,²⁰ and for

10. *Hindustan Times*, December 11, 2007.

11. *Professor Yashpal v. State of Chhatisgarh*, AIR 2005 SC 2026.

12. *Sarbanda Sonowal v. Union of India*, AIR 2005 SC 2920.

13. *Rameshwar Prasad v. Union of India* (2005) 7 SCC 625.

14. *Satya Narayan v. N T Ramarao*, AIR 1988 AP 144.

15. *Centre for PIL v. Union of India* (2005) 8 SCC 202.

16. *All India judge's Association v. Union of India*, AIR 1992 SC 165.

17. *Murli S. Deora v. Union of India*, *supra* note 7.

18. *In Re Noise Pollution*, 2001 (7) SCALE 481.

19. *Vishwa Jagriti Mission v. Central Government*, 2001 (3) SCALE 503.

20. *Union of India v. Association of Democratic Reforms*, 2001 (3) SCALE 188.



questioning irregular allotment of petrol pumps.²¹ PIL has been filed by lawyers challenging commercial transactions of public institutions²² and for judicial review of appointment of government counsel.²³ PIL was allowed by a retired IAS officer with regard to power purchase agreement,²⁴ by a taxpayer to prevent misuse of public property by any one²⁵ and by guardians of students to challenge the revision of syllabus for VIII class.²⁶ Advocates practising in various courts in Tamil Nadu were permitted to file a PIL for the cancellation of bail granted to certain persons.²⁷ The court has been moved seeking to ban *Quran*²⁸ and the transmission of TV serial.²⁹ PIL was filed to call back Indian cricket team from Australia and for preventing an alleged marriage of Miss World, Ashwarya Rai, with trees to overcome certain astrological obstacles in her marriage. PIL was filed on matters such as Richard Gere's kissing of actress Shilpa Shetty, practice of private schools for conducting admission interviews for very young children, Indo-US nuclear agreement, technical support for strengthening the Bhimnagar barrage in Nepal to prevent the recurrence of flood, are some examples of blatant misuse of PIL.³⁰

A newspaper report³¹ highlighted the engagement of the Delhi High Court and the Supreme Court in the urban renewal of the city of Delhi by issuing successive directions to the city government to perform its statutory duties pertaining to good governance. From doing away with street cattle on the city's streets to devising a policy for colony gates, over 80 per cent of PIL before Delhi High Court pertain to civic issues. The judicial orders to remove commercial establishments in the residential areas triggered of widespread public resentment and protests on the ground that thousands of families and workers shall be rendered unemployed and dislocated. Ultimately, in May 2006, Parliament passed a

21. *Common Cause v. Union of India*, 1996 (6) SCC 530.

22. *N. Parthasarthy v. Controller of Capital*, AIR 1991 SC 1420.

23. *Harpal Singh Chauhan v. State of U.P.*, 1993 (4) JT (SC) 1.

24. *Dr J.C. Almedia v. State of Goa*, AIR 1988 Bom 191.

25. *Jayalalitha v. Government of Tamil Nadu*, AIR 1999 SC 2330.

26. *West Bengal Board of Secondary Education v. Smt Basan Rani Ghosh*, AIR 1982 Cal 467.

27. *R. Ratinam v. State District Crime branch Madurai*, AIR 2000 SC 1851.

28. *Chandanmal Chopra v. State of West Bengal*, AIR 1986 Cal 104.

29. *Oddysy Lok Vidyayan Sangathan v. Union of India* (1988) 1 SCC 168.

30. "PIL and Indian Courts" in *Combat Law*, November-December 2007, Vol. 6:6 cited in Surya Deva *supra* note 2 at 28

31. *Hindustan Times*, December 18, 2005.



legislation to put a *moratorium* on the demolition and sealing of commercial establishments thereby frustrating the judicial orders for demolition of unauthorized constructions and sealing of shops in residential areas. A PIL was immediately filed to challenge the validity of this law as protective of land mafia and violators of law but the Supreme Court refused to issue a stay order on the central legislation.³²

When, during April-May 2006, the move by the central government to introduce 27 per cent reservation for other backward classes (OBCs) in higher educational institutions evoked widespread protests by the doctors and the students, the Supreme Court responded to a PIL seeking stay of the 93rd constitutional amendment Act of 2005 inserting article 15(5) and, although it did not grant stay, notices were issued to the government to explain the basis, need and criteria of introducing OBC quota and the basis of this amendment.³³ Judicial transgression of the principle of separation of powers, however, does not evoke protest even by political establishment. On the other hand, at times when the political establishment has failed to resolve social or political controversies, the judicial intervention is sought through PIL to resolve social unrest as happened, for example, during anti-reservation agitations against *Mandal I* (1990) and *Mandal II* (2006).³⁴

VI Judicial regression in the phase of economic reforms

Forced eviction and homelessness

In *Olga Tellis*,³⁵ the Supreme Court held that no one has the right to make use of public property for private use without requisite authorization and, therefore, it is erroneous to contend that pavement and slum dwellers have a right to encroach upon pavements by constructing dwellings thereon. If a person puts up a dwelling on the pavement, whatever may be the economic compulsion behind such an act, his use of pavement would become unauthorized. In *Almitra Patel v. Union of India*,³⁶ the

32. *The Hindu*, May 24, 2006.

33. *The Hindu*, May 30, 2006.

34. The Supreme Court in *Ashoka Kumar Thakur v. Union of India* (2008) 4 SCR 1 has upheld the constitutional validity of Ninety-third Amendment inserting article 15(5) in 2005 and Central Educational Institution (Reservation in Admission) Act, 2006. For a critique, see Parmanand Singh, "Tension Between Equality and Affirmative Action : An Overview", 1 *Jindal Global Law Review* 97 (2009).

35. *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

36. (2000) 2 SCC 679.



Supreme Court commented adversely upon the government's policy to rehabilitate the slum dwellers. Insinuating criminality on the slum dwellers, the court remarked:³⁷

Establishment or creating slums, it appears to be good business and is well recognized. The number of slums has multiplied in the last few years by geometrical proportions. Large areas of public land in this way are usurped for private use free of cost.... The promise of free land at the taxpayers cost, in place of *jbuggis* is a proposal, which attracts more land grabbers. *Rewarding an encroacher on public land with free land alternative site is like giving reward to a pick pocket.*

In dealing with forced eviction, the court failed to take into account the economic compulsions that give rise to pavement and slum dwellings and restricted the examination of the issue from purely a statutory point of view rather than from human rights perspectives. The anti-human rights approach of the Supreme Court depriving thousands of *tribals* and *dalits* of their right to means of livelihood, housing and shelter, can be contrasted with the judgment of the South African Constitutional Court in *Grootboom*³⁸ wherein the court enforced the right to housing of hundreds of children and adults who had been forcibly removed from their homes and were living in very deplorable conditions in temporary settlements. The South African Constitutional Court imposed an obligation on the state to provide access to housing, health care, adequate food and so on to those who were unable to support themselves. Similarly, the decision of the Indian Supreme Court in *T.K. Rangarajan v. Govt of Tamil Nadu*³⁹ that there is neither a fundamental nor legal or moral right to strike by the government employees (despite the fact that such right has been granted by a statute and previous decisions⁴⁰) has further strengthened

37. *Id* at 685. Earlier in *Abmedabad Municipal Corporation v. Nawab Khan* (1997) 11 SCC 123, the Supreme Court held that though no person had a right to encroach and erect structures or otherwise on footpaths, pavements, or public streets or any other place earmarked for a public purpose, the state had a constitutional obligation to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

38. *Govt of R.S.A. v. Grootboom* (2000) 11 BCLR 1169 (CC).

39. (2003) 6 SCC 581.

40. The Industrial Disputes Act 1947 states as to when the strike can be called legal or illegal. In *Gujarat Steel Tubes v. Mazdoor Sabha*, AIR 1980 SC 1896, Bhagwati



the perception among a significant section of the poor and the disadvantaged section of the Indian society that in the phase of economic reforms, the ideology of the court has shifted decisively in favour of the rich and powerful sections of the society.

Development and the rights of the oustees

In environmental and developmental matters, the courts are quite often faced with the issues of competing interests of rights and development. The most striking example is the conflict situation arising out of the Sardar Sarovar Dam. In *Narmada Bachao Andolan v. Union of India*,⁴¹ the court virtually ignored the impact of continued construction of Sardar Sarovar Project dam on thousands of tribal people of Narmada valley who had been displaced without adequate rehabilitation and resettlement options when it ruled that the displacement of tribals and other persons would not *per se* result in the violation of their fundamental or other rights. The court on a majority opinion, on the other hand, venerated the virtues of big dam projects for bringing green revolution in the country. The court also made disparaging remarks against *Narmada Bachao Andolan* (NBA) as an anti-development organization.⁴² When the NBA activists criticized the judgment as anti-poor, one of the activists, a Booker Prize winner, was punished for contempt of court. However, the Supreme Court later on realized the need of rehabilitation of the people displaced by the raising of dam.⁴³ The Supreme Court and Narmada Tribunal Award ordered that all displaced persons should be rehabilitated and resettled fully at least six months prior to raising the dam's height. Despite the orders of the Supreme Court and Narmada Tribunal Award, on 8 March 2006, the Narmada Control Authority gave an approval to further raise the height of the dam from 110.64 to 121.92 meters. All this has happened due to insensitivity and callousness of the governments of Gujarat, Maharashtra and particularly Madhya Pradesh which gave a false

J expressed the view that the right to strike was an integral part of collective bargaining. The same was the approach of Ahmadi J in *B.R. Singh v. Union of India* (1990) Lab IC 389, 396 (SC).

41. (2000) 10 SCC 664.

42. In a strong dissenting judgment, Bharucha J took the stand that Sardar Sarovar Project was proceeding without a comprehensive environmental appraisal and without necessary environmental impact studies.

43. *Narmada Bachao Andolan v. Union of India*, AIR 2005 SC 2994. On March 17, 2006, Medha Patkar sat on fast unto death for stopping further raising of the dam which affected 35000 families until those displaced by submergence by raising the dam were properly rehabilitated. See *The Hindu*, March 26, 2006 .



official report that all displaced persons had been rehabilitated. From March 17, 2006, NBA leader Medha Patkar went on a 21 day fast demanding rehabilitation of the families displaced by the raising of the dam. On April 17, 2006, while hearing applications from NBA and the project affected families, seeking stoppage of ongoing construction and raising the dam, the Supreme Court giving a green signal to the on going construction warned the concerned states that it would have no option but to stop construction, if the rehabilitation and relief measures for the oustees were found to be inadequate and not in accordance of its orders of 2000 and 2005 and of the Narmada Tribunal Award.⁴⁴ How does one ensure that development should not be at the cost of the habitat and denial of basic human needs?

VII Conclusion

Ideologically, PIL activism performs a formidable task of addressing and confronting domination formations in civil society and activates public discourse on practices of power. The significance of this movement lies in the creation of norms for a just and equal society. In performing expose function, the judges remind and alert the executive of its failings and lapses and give the public functionaries an opportunity to right the wrong. PIL activism creates a new jurisprudence of state accountability and seeks culture formations sensitive to human values and human rights. Therefore, to expect that PIL will automatically bring about legal and social change is a delusion. One should always bear in mind the limits of judicial action in bringing about social change.

The rights based approach of the Supreme Court in interpreting right to life has enabled people to formulate their claims in the language of rights. It has also enabled people to formulate social goals to be realized by positive state action in terms of rational public spending in social welfare. The court's judgments on the right of school mid-day meals, effective implementation of poverty alleviation schemes, obligation of hospitals to provide medical treatment to the needy and payment of salaries to the starving employees of public sector undertakings who were denied their salaries for a long time,⁴⁵ are some of the positive

44. *The Hindu*, Delhi, April 18, 2006.

45. *Kapila Hingorani v. State of Bihar* (2003) 6 SCC 1; *Kapila Hingorani v. State of Bihar* (2005) 2 SCC 262. In these cases, the Supreme Court directed the States of Bihar and Jharkhand to deposit money with the High Courts of the concerned states for disbursement of salaries to the employees of public sector undertakings.



achievements of an activist court. The far-reaching judgments concerning Bhagalpur blindings,⁴⁶ the Bihar undertrial cases,⁴⁷ mentally ill in jails,⁴⁸ victims of sexual harassment,⁴⁹ child and bonded labour,⁵⁰ to name a few, have provided needed relief and exposed the failings of the executive. The court has also evolved compensation jurisprudence for violation of human rights. PIL has made significant contribution in preventing environmental degradation and in activating the statutory authorities set up under various environmental laws. PIL on environmental matters related to issues such as environmental degradation due to stone quarrying in Dehradun region,⁵¹ environmental pollution in Delhi due to mechanized slaughter houses,⁵² development scheme adversely affecting the quantity and quality of a river water,⁵³ pollution by tannery industry,⁵⁴ urban and solid waste management,⁵⁵ vehicular pollution,⁵⁶ protection and conservation of wildlife,⁵⁷ degradation of Taj Mahal⁵⁸ and so on. In some environmental matters, the Supreme Court took very bold steps such as the shifting and re-location of polluting industries out of Delhi and to force the commercial vehicles to convert to CNG to improve the quality of air and to stop the deforestation across the country to develop public law of nuisance to control pollution.⁵⁹

Recognition of social rights by the courts is indeed commendable and in some cases they have even tried to enforce these rights but it must

46. *Supra* note 4.

47. *Supra* note 3.

48. *R.C. Narain v. State of Bihar*, 1986 Supp SCC 576; *B.R Kapoor v. Union of India* (1989) 3 SCC 387.

49. *Vishakha v. State of Rajasthan* (1997) 6 SCC 241.

50. *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 243; (1991) 4 SCC 177; *Neeraja Chaudhary v. State of M.P.* (1984) 3 SCC 243; *M.C. Mehta v. Union of India* (1996) 1 SCALE 42.

51. *RLE Kendra v. State of U.P.* (1985) 3 SCC 614.

52. *Buffalo (Protection of Wildlife) Traders Welfare Association v. Maneka Gandhi* (1996) 1 SCC 35.

53. *DLF Universal Ltd v. Prof. Laxmi Sagar* (1998) 7 SCC 1.

54. *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647.

55. *Almitra Patel v. Union of India* (1998) 2 SCC 416.

56. *M.C. Mehta v. Union of India* AIR 1998 SC 2340.

57. *M.C. Mehta v. Union of India* (1997) 3 SCC 715.

58. *M.C. Mehta v. Union of India* (1997) 2 SCC 353.

59. There are numerous other positive achievements of PIL on environmental matters. Recently, the Supreme Court totally banned the killing of elephants trafficking in Indian ivory, *Indian Handicrafts: Emporium v. Union of India*, AIR 2003 SC 3240.



be recognized that it is beyond the judicial function to secure right to food, shelter, health care, housing, education, just to name a few. However, the recognition of social rights by judges is of little avail unless the public policies and economic arrangements are truly designed at social empowerment and there is sufficient social or public spending on food security, elementary education, social insurance, employment guarantee, job security, housing, health care and protection against social exclusion and these policies are properly implemented and there is transparency in governance.

It must be remembered that PIL may not always be utilized to achieve a desired result. The legal resources generated through PIL opinions may be utilized to promote a drive for political mobilization of the issues such as the present national campaign on right to food, gender equality, environmental protection, reform of criminal justice system, prevention of female feticide, poverty reduction, and the rehabilitation of the oustees of mega developmental projects and so on. The NBA agitation recently came as a wake up call even for pro-economic reformers who view large dam as a vital infrastructure project.

There seems to be a national consensus on the legitimacy of judicial activism and expanded judicial power but it cannot be forgotten that the judiciary having neither the purse nor the sword remains the weakest wing of the government. Hence, it is beyond the judiciary to provide effective responses to the growing corruption, wrong development or rights violations. In many cases, the judicial directions remain unenforced and unimplemented. Despite enunciation of fundamental right to medical care, health care has been neglected to a very large extent. Despite plenty of food in the country, we occasionally hear the reports of farmer's suicides and starvation deaths. Police brutalities and custodial violence is the order of the day. The judicial directions providing safeguard to arrestees and those in police custody, prevention of sexual harassment at workplace, forbidding the use of third degree methods and custodial rape and violence are not properly implemented. Willful defiance to PIL orders would surely dilute the credibility of the judiciary but such defiance is criticized by everyone and this further augments the legitimacy of judicial activism.

It is respectfully submitted that despite the expansive pronouncements of the court on the meaning of right to life in the early career of PIL, the ideology of the courts during the phase of economic reforms has shifted in favor of the rich and powerful sections of the society and this is why the courts have frowned upon any challenge to the policy of cleaning up



slums for ultra modernization of big cities, or raising of dams, or the measures of privatization, globalization or disinvestments. In recent times, the attitude of the courts has been to show favor to 'development' over the rights of the oustees or the environment. On 9th May 2006, the Supreme Court categorically ordered that slum dwellers have no right to encroach upon public land and must be removed and they have no fundamental right to live in such dwellings. Poverty or economic compulsions cannot be a justification for encroachment. By one stroke of pen, the Supreme Court has effectively thrown away millions of poor people across the country who are living in slums and on pavements.⁶⁰ What prevents the court from directing the state to provide alternate sites to the evicted slum and pavement dwellers? In May, 2006, the Delhi High Court banned the cycle rickshaws in a busy market in Delhi rendering hundreds of rikshaw pullers jobless. In the field of professional education, judicially advocated commercialization/privatization of education has made education inaccessible to millions of poor people. Despite too much of judicial activism, the portals of courts are inaccessible to the majority of Indians. The decision that the workers have no fundamental right to strike as a means of democratic protest again favors the capitalist and dominant class and goes against the poor.

The Supreme Court has consistently refused to extend its activism in the field of economic policies on the ground that economic decisions cannot be tested in a court of law but on the floor of Parliament. In *Balco*,⁶¹ the Supreme Court ruled that no stay order should be granted with respect to public projects or schemes or economic policies. A person cannot by way of PIL challenge illegalities, perversions and corruption committed by the executive in the implementation of such policies unless he/she was personally aggrieved by such economic or developmental measures.⁶² The Supreme Court has virtually struck a deathblow to PIL in cases involving economic reforms or developmental projects. In *Balco*, the court imposed a liability of reimbursement on the PIL petitioner in the event of the petition challenging a development scheme or measures of economic reform was dismissed. If a petitioner is asked to reimburse or give a bank guarantee or an undertaking that he will make good the loss that may occur to the parties in case the PIL is dismissed, in reality no *interim* injunction will ever be granted in PIL cases as the PIL petitioner

60. *The Times of India*, Delhi, May 10, 2006.

61. *Balco Employees' Union (Regd) v. Union of India* (2002) 2 SCC 333.

62. *Id.* at 381.



has neither the adequate financial resources nor the infrastructure to fight the powerful adversary. How can a PIL petitioner be made liable for differential attitude of the courts? For example, *Narmada* case was handled by different benches of the Supreme Court, one bench staying the construction of the dam and another bench allowing the construction. Could NBA activists be asked to reimburse the loss sustained to the Sardar Sarover Project, or to the government or to the contractors, by the stay order stopping the construction of the dam for four years? Why such pernicious view stultifying the ethos of PIL should be allowed to prevail? The newly announced National Litigation Policy has reiterated the policy to discourage PILs seeking a stay of the ongoing developmental projects.

The question that needs to be asked is: Was PIL jurisdiction evolved to address largely the issues of governance? The way PIL has grown in its expanded scope and reach, there is a high probability that it will gradually dilute the original commitment of social activism to empower the oppressed masses to use law for vindication of their legitimate human rights. What are the reasons for the decline of PIL cases espousing the cause of the poor and the downtrodden? Have the judges become less sensitive towards the problems of the poor and people consider it futile to approach the court for seeking justice for the poor? Sometimes, the PIL actions predominantly focus the interests of the middle classes, other times, they focus the issues of misuse of public property or public funds, sometimes the core human rights issues of the weaker sections, and other times issues of governance. PIL jurisprudence is largely episodic in response to some happenings reported by media or investigative journalism.

PIL may be utilized for empowering people, for promoting drive for social movements, for launching proposals for institutional and legal reforms and for enhancing public accountability. PIL is not a panacea for all evils afflicting the polity and society but democratization of access to justice through this device enables the powerless people to raise their voice against various kinds of injustices and deprivations. PIL may not be a substitute for failed political and administrative institutions but it can surely be utilized for a culture formation in which the political executive is made sensitive towards the values of a just society based upon democratic governance and rule of law.

The relaxation in the traditional concept of *locus standi* alone is not the sole characteristic of PIL. In the context in which PIL had been evolved, it must fulfill other characteristics as well. A PIL must be filed by a public spirited citizen or a social action organization on behalf of those



individuals and groups who are not in a position to approach the court for vindication of their legitimate human rights due to their disadvantaged position. Many PIL cases lack a *lis* or dispute to be adjudicated by a court as a neutral empire as in the adversarial litigation. In PIL, the court normally acts as an investigator, a mediator, a counselor, or a collaborator. PIL requires a judge to play an active role in providing immediate relief to the victims of human rights violations by relaxing procedural technicalities and by exempting the petitioner to prove the alleged facts which are investigated by the court itself. If all these characteristics are not present simultaneously, the matter cannot legitimately be called a PIL. But unfortunately the judges have not resisted their temptation to treat any and every matter as a PIL even if such a matter is not even remotely connected with human rights. The result is that over the years, the courts have emerged as institutions of governance through the device of PIL. In this author's view, the norms for entertaining a PIL should be laid down so as to eliminate the subjective choices of the judges to entertain any thing under the sun as a PIL. As has been stated above, PIL should be limited only to vindicate the rights of the victims of governmental lawlessness and social oppression. Issues involving political governance, or misrule or arbitrary exercise of power and so on are also important but they should still be handled within the traditional mould of litigation. Such cases need not borrow the nomenclature of PIL.

It may be concluded that judicial activism and PIL will not automatically achieve the goal of social empowerment. It is important to investigate how far the judicial initiatives have been effective in providing symbols for rallying victimized or exploited groups before the courts and other forums? How far the awareness of the new dispensation is accompanied by enhanced capabilities of the dispossessed groups to make a sustained and effective use of legal resources to combat governmental lawlessness? How far the judicial initiatives have been able to promote drive for wider legislative changes or law reform or for launching people's movement to force the government to be responsive to judicial prodding? It must be recognized that PIL emphasizes litigation as a means of social change and thus enhances the dependency of the victim groups on the social activists. Perhaps, it does not generate any effective participation of those groups who remain passive depending upon the efforts of others. PIL strategy is largely controlled by the elites who utilize the legal resources according to their own priorities and choices.

The impact of PIL decisions is hard to measure and requires serious social research. The effectiveness of judicial decisions are powerfully



affected by several interlocking factors too remote from the knowledge and control of the courts such as traditional resistance to change, alliances of the implementers of law with vested interests (local *dadas*, influential politicians and other dominant elements), improper or ambiguous dissemination of judicial directions, *etc.* Weak communication channels accompanied by well-nurtured and well-structured barriers to information may also lead to the diffusion, delay or defiance of judicial directions.

It is undoubtedly true that in recent years the cause of social justice and emancipation of the oppressed groups has been advanced in many ways through the device of PIL but the fact that in some cases PIL has achieved positive success does not certify this technique as a sovereign remedy to protect the human rights of the poor. Mass production of rights through PIL has resulted in heightened expectations from the judges that they are available to provide relief from all miseries and misfortunes. Human rights of the poor and the disadvantaged groups will be better protected by subjecting PIL to discipline and control which should be limited only to the cases focusing on hapless victims of domination and governmental lawlessness. The overuse of PIL for every conceivable public interest might dilute the original commitment to use this remedy only for enforcing human rights of the victimized and the disadvantaged groups.