When Courts Violate 'Due Process'

Handling of Public Interest Litigation by the Supreme Court of India

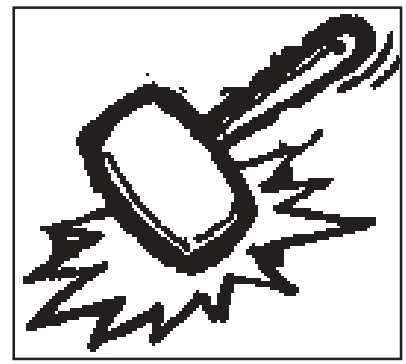
❍ **Shobha Aggarwal**

The phenomenon of judicial activism has become so pervasive that it could be described as 'the global expansion of judicial power.'[1] Judicial activism has acquired a sense of legitimacy all over the world. Many Non Governmental Organizations (NGOs) are trying to use law-related strategies to achieve social justice through Public Interest Litigation (PIL). There is a growing perception that the courts will not fail in the task of enforcing democracy. In India, the Supreme Court has been seen to fill a vacuum left by an increasingly venal and insensitive executive and unresponsive legislature.

There is consensus among various legal scholars that the genesis of PIL in India lies not so much in an aware public articulating and asserting its rights, as in the Supreme Court's attempt to redefine its role in a particularly traumatic phase in the Nation's life.

In the late seventies, the Supreme Court (SC) came in for severe condemnation for its pusillanimity during the period when an internal Emergency was clamped in India between 1975-77. The apex Court had failed in its duty to uphold the Constitution and stood by as a mute spectator to the massacre of individual liberty and the demise of the rule of law. Almost as an act of penitence, in the post-Emergency period, the SC became active as never before to uphold the fundamental rights of the people. It virtually extended an invitation to the under-privileged to approach the Court in an attempt to regain its lost social legitimacy. In *People's Union for Democratic Rights v. Union of India* case, the judgement in 1982 stressed on how PIL in India was conceived by the SC:

> …a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.[2]



Though the nature of cases filed as PIL in India has changed, its definition remains the same. Even in 1999 the Court reiterated its earlier definition that:

> …a public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interests. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights.[3]

However, while earlier cases concentrated on providing justice to the disadvantaged, gradually other interests came to be addressed. As a consequence of several PIL judgements, the interests of the economically weaker class have therefore suffered, even though PIL in India derives its legitimacy as an instrument to provide justice to the underprivileged and the downtrodden.

Undermining Natural Rights?

Post-Emergency judicial activism had generated a hope that the judiciary would intervene to protect the rights of the people. This hope and an increasing reliance by public-spirited individuals and groups upon PIL as a solution to all social evils, is open to question. In an era of globalisation, rights enjoyed by various vulnerable sections of the population are under threat. In this scenario the judiciary is expected to intervene and protect the rights of the disadvantaged sections of society. Contrary to this expectation, we witness the strange spectacle of the judiciary itself hacking away at the right of the people. There has been a trend in recent years to make the judgements compatible with the new ecomomic order regardless of their effects on the underprivileged.

Through PIL the judiciary has usurped the powers of the (corrupt and inefficient) executive over the last quarter century; more recently it has dared to transgress on areas assigned

to it by the Constitution and even ventured to take on the legislature as well. The judiciary got emboldened in its endeavour as the PIL experiment ensured it a measure of social legitimacy with little or no criticism of the outcome and follow-up of PIL directives and orders. Middle class activists and socially motivated intellectuals as well as legal professionals not only maintained a deathly silence on these issues but actually sang songs in praise of PIL, ignoring the fact that in several cases the law of natural justice was violated, the due process was not followed there was a rush to issue judgements, in many cases notices were not served to those who were eventually to be affected by the outcome of these cases and several judgements were legally null and void because the procedures adopted by the judges were unconstitutional.

Violating Natural Justice

In PIL the SC did away with procedural aspects, meticulously followed in adversarial litigation. As far back as 1984, Pathak J. had the foresight to comment that procedural dilution could result in the abuse of the process of the Court.[4]

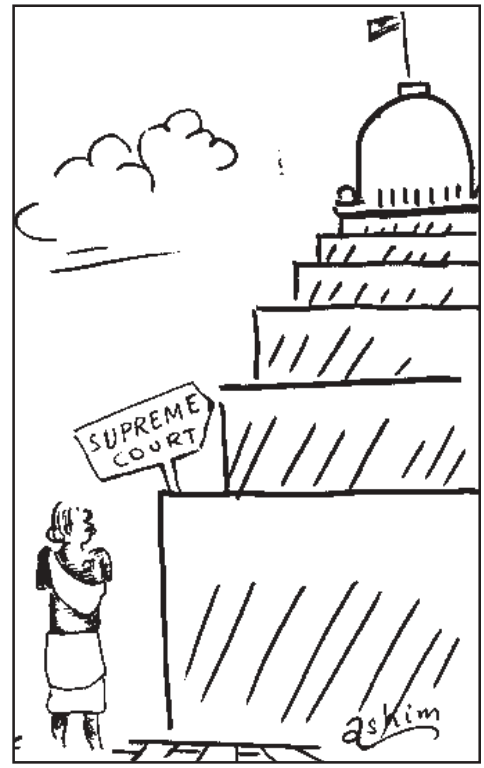
Principles of natural justice are essentially meant to ensure a fair hearing. The concept encompasses two rules:

(i) *nemo judex in re sua, i.e.* the authority deciding the matter should be free from bias; and

(ii) *audi alteram partem, i.e.* a person affected by a decision has a right to be heard.

In fact the second rule is wide enough to encompass the first rule. The *audi alteram partem* rule ensures that no one be condemned unheard. It is the first principle of civil jurisprudence that persons against whom any action is sought to be taken, or whose right or interest is being affected, are given a reasonable opportunity to defend themselves. The *sine qua non* (an indispensable requisite) of fair hearing is that before adjudication starts, the authority concerned should give to the affected party a notice of the case so that the party may adequately defend itself.

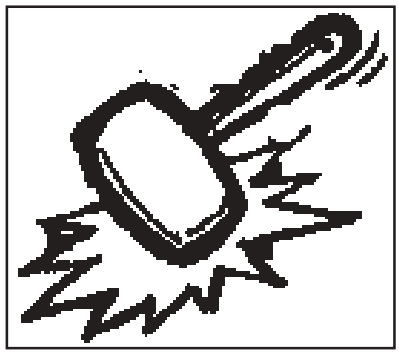
For a notice to be valid and effective, it must be properly served on the concerned person. It must give sufficient time to enable the individual to prepare his or her case. In many cases courts have implied an obligation to give notice, even though the relevant Act or rules made no express provision for it.



In *President, Commonwealth Co-op. Society v. Jt. Registrar (Gen.) of Co-op Societies* it was held that though the law did not expressly provide for a notice being given to a society, rules of natural justice required such a notice be given before an order for winding up was made.[5] It held further that an order passed in contravention of principles of natural justice was void and the fact that the petitioner appealed against the order, in which appeal the order was confirmed, did not preclude the petitioner from urging that the original order was void.

In India, any curtailment of the principles of natural justice must be congruous with permissible restrictions on fundamental rights. Since PIL generally involves fundamental rights, waiver of rules of natural justice cannot be justified on any ground. Initially, even the SC applied the rules in the pavement dwellers case.[6] The Court held that given the facts of the case, pavement dwellers, without any intention of violating the law, were driven by circumstances to make pavements their homes. Having established that the right to life includes the right to livelihood, the Court observed that after anxious consideration, it had come to the conclusion that Section 314 of the Bombay Municipal Corporation Act, 1888 for removal of encroachments on footpaths could not be regarded as unreasonable, unfair or unjust. It observed that the main attack was against the provisions of Section 314 of the Act, which provided that the Commissioner may without notice, cause to be removed obstructions mentioned in that section. Mr. Chandrachud, the then Chief Justice of India (CJI) said that the section conferred a discretionary power, which, like all power, must be exercised reasonably, and in conformity with the provisions of our Constitution. Section 314 must be read to mean that except in cases of urgency, which brook no delay, in all other cases no departure from the *audi alteram partem* rule ("hear the other side") must be adhered to.[7]

The exceptions to the rule of natural justice can only be made in cases of dire emergency when life and limb are at risk, that is, in such cases where the delay, which the right of hearing may involve, would frustrate the object of the action. The principles of natural justice would not apply, for example, if there is a wall or building in



immediate danger of collapsing and there is no time to give notice in public interest.

In early years when PIL had started, the litigants usually represented the interest of one or the other vulnerable section. In such a case the Court may have felt no need to issue notices because their interest was already being represented. Even the rules of natural justice do not require that notice be given to those likely to benefit from the outcome. To take a fictitious case, if the SC decided that every tobacco user be given compensation by tobacco companies for the damage caused to their health, the tobacco user need not necessarily be given notice. But the tobacco companies must be given a chance to be heard as their financial interests are going to get adversely affected.

Judicial Bias at Play

There can only be two reasons for overlooking the rules of natural justice in PIL. The first is bias that is barred by the first rule of natural justice. The maxim *nemo judex in re sua* literally means that a man should not be a judge in his own case. It has also come to mean that a judge must be impartial, in other words the judge should not have any preconceived notions. In most cases the first rule is the reason why the second rule *audi alteram partem* is violated. It is the pre existing bias in the minds of the judges that prompts them to ignore the second rule of natural justice.

Another reason could be that of practical considerations: Judges might feel that there is no answer to the charge made. Only a biased judge can presume before hearing the other party that there is no answer to the charge. According to Paul Jackson:

> ...of all the grounds for excluding the rules of natural justice none is more vague than that of practical consideration.
>
> ...There are at least three justifications for requiring a hearing even where there appears to be no answer to a charge. First, experience shows that unanswerable charges, may, if the opportunity be given, be answered; inexplicable conduct be explained. Secondly, the party condemned unheard will feel a sense of injustice. Thirdly, suspicion is inevitable that a body, which refuses a hearing before acting does so because of the lack of evidence not because of its strength.[8]

Even the SC recognized the necessity of the right to be heard, while

Victims By-passed: The Union Carbide Case

In December 1984, a chemical holding tank at a pesticide plant in Bhopal owned by Union Carbide India Ltd, a subsidiary of Union Carbide Corporation, leaked MIC and other lethal gases, resulting in the worst industrial disaster of the world. On March 29, 1985, the Government of India became the sole representative of the gas victims by virtue of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, passed by the Parliament. On December 17, 1987 the District Court of Bhopal ordered Carbide to pay an interim compensation of Rs. 350 crores in a suit filed by the Government of India. On Union Carbide's appeal, the High Court of Madhya Pradesh modified the order and reduced the interim compensation amount to Rs. 250 crores. Both, the Government of India and Carbide, appealed to the Supreme Court against the order of the High Court. Instead of deciding the question of interim compensation, there was a Supreme Court assisted settlement of the main suit itself. After withdrawing to itself the original suits pending in the Bhopal Court and disposing them off without adjudicating the issue in question, the Supreme Court by its order dated 14/15 February, 1989 directed that there be an overall settlement of claims in the suit for $470 million and termination of all civil and criminal proceedings. No notices were given to any victims or their organisations at the time.

The settlement evoked widespread protests from the victims and other organisations from all over the country and even abroad. As a result a number of review and writ petitions were filed before the Supreme Court. The settlement amount remained unchanged. Even though criminal proceedings were reinitiated, the Supreme Court in 1997, reduced the criminal liability of the Union Carbide from culpable homicide not amounting to murder, to rash and negligent act, thus whittling down the disaster which killed more than ten thousand people and permanently disabled lakhs of people, to a motor accident, the maximum punishment for which is two years, if the crime is proved.

Had the Supreme Court followed its own reasoning in the *Shephard* case that pre decisional hearing is necessary because in a post decisional hearing there is a tendency to uphold the decision already taken, the entire litigation could have taken a different direction. Had the Court heard the organisations representing the victims before it thought of a settlement, the nature and outcome of the case could well have been very different. In this case eventually, following post decisional hearings, the Court, as predicted by itself, upheld the decision made earlier.

adjudicating in the pavement dwellers case, wherein it observed:

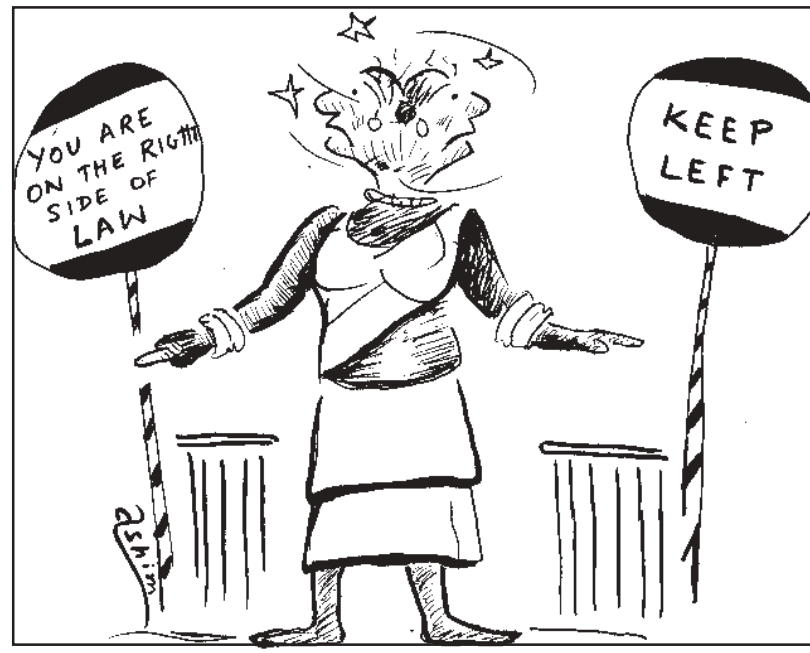
> The proposition that notice need not be given of a proposed action because, there can possibly be no answer to it, is contrary to well-recognised understanding of the real import of the rule of hearing. This proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other…The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity. …that expresses their dignity as persons.[9]

Void or Voidable Judgements

The question therefore arises - when an authority required to observe natural justice, in making an order, fails to do so, should the order made by it be regarded as void or voidable? Generally speaking, a voidable order means that the order was legally valid at its inception, and remains valid until set aside or quashed by the courts, that is, it has legal effect up to the time it is quashed. A void order is no order at all from its inception; it is a nullity and is *void ab initio*.

In *Ridge v. Baldwin*,[10] while referring to the argument that the decision of the watch committee to dismiss a Chief Constable without observing natural justice was voidable and not void, Lord Reid observed:

> Time and again in the cases I have cited it has been stated that a declaration given without regard to the principles of natural justice is void...I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case?



The above judgement has been quoted with approval in many judgements of the Supreme Court of India. In most cases of adversarial litigation the SC has set aside those judgements of lower courts that violated rules of natural justice. There is no reason why the rules of procedure, indispensable in providing justice in adversarial litigation should not be followed in writ petitions, even if that writ petition were in public interest.

The two major reasons for the higher judiciary not following rules of natural justice in public interest litigation are:

- That a writ petition is filed against the State and there is no need to give notices to other groups of people whose interests may be affected by the order.
- Judicial bias which leads to the presumption that the affected will not have anything to contribute.

To illustrate the bias of the Court a few instances are given here: In *World Saviors v. Union of India* & *Others* the SC directed 26 industries to close down.[11] No directions were given for payment of compensation to workers. In Hariram *Patidar v. M.P. Pollution Control Board & Others*, M/s. Staller Drugs Ltd. Doshigaon, Ratlam was ordered to be closed down until valid consent from the Madhya Pradesh Pollution Control Board was obtained.[12] In *D.P. Bhattacharya & Others v. West Bengal Pollution Control Board* on the basis of the report of the National Environment Engineering Research Institute, the SC directed closure and relocation of five hazardous industries from a residential area in Calcutta.[13] *In Tarala V. Patel & Others v. Union Territory of Pondicherry*, the Pondicherry Distillery was ordered to be relocated and not to operate at the present site beyond April 30, 1997 irrespective of whether the new Distillery had started functioning or not.[14]

In all the above cases, though workers were adversely affected by the judgement (they were about to lose their livelihood), they were neither given any notice nor heard during the proceedings. The judgements also do not safeguard workers' interest. The factory owners

...Contd. on pg. 33

Case of Judicial Excess : Violating Rights of HIV Infected Persons

In a recent judgement the SC held that HIV affected persons' right to marry is suspended. The case had come to SC in appeal against the judgement of the National Consumer Disputes Redressal Commission (NCDRC) that had refused him damages against a hospital for breach of confidentiality of his HIV status.

The facts of the case are as follows: Dr X (Civil Appeal No. 4641 of 1998, Judgement dated September 21. 1998) tested positive for HIV when he donated blood. Subsequently his scheduled marriage was called off on the ground that he was HIV infected. His community got to know of the reason for the broken engagement and he was castigated and ostracized. He approached the NCDRC for damages against the hospital, on the ground that the information that was required to be kept insecret under medical ethics was disclosed illegally and, therefore, the respondents were liable to pay damages. The petitioner had *not* sought damages on the ground that his marriage had been cancelled but that the hospital had breached doctor-patient confidentiality. The NCDRC dismissed the Petition as also the application for interim relief summarily by an order dated July 3, 1998 on the ground that the petitioner may seek his remedy in a civil court.

The doctor appealed to the Supreme Court against the NCDRC order. The SC, instead of limiting itself to deciding the primary issue at hand, that is, whether the hospital was guilty of violating medical ethics and liable to pay damages or not, went on to decide the larger question of whether HIV+ people have a right to marry, a question that had not even been raised before it. It came to the conclusion that the appellant had no right to damages because the right to marry in the particular circumstances of the case is a suspended right.

The counsel for Dr X had vehemently contended that the principle of "duty of care", as applied to persons in medical profession, includes the duty to maintain confidentiality and since this duty was violated by the Hospital, they are liable in damages to the applicant.

The case raises several issues. First and foremost, Dr X had not gone to SC to assert his right to marry, but against the dismissal order of the NCRDC, and to settle the question whether or not medical ethics had been violated by Hospital Z in his case. Unfortunately the SC dwelt at great length on the right to marriage of HIV+ people. The SC declared that marriage of an HIV+ person could be construed as a criminal offence under section 269 and 270 of the IPC. Section 269 makes negligent acts likely to spread dangerous infectious diseases an offence punishable by up to six months or fine or both. Section 270 relates to malignant acts likely to spread a dangerous disease and is punishable by imprisonment for up to two years, or with fine or both.

In its lengthy discourse on dangers to public health the Court also failed to address a pertinent point, that of consent which alone is the basis of marriage or sexual partnership in society. What if an HIV negative person, fully aware of the HIV positive status of a betrothed chooses to marry the person regardless of its consequences to his or her health or life?

How the moral considerations of the judges have influenced the outcome of the case is evident throughout the judgement at various places. The way the judges have defined marriage is enough to illustrate the point: "Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical union. When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on this planet."

The laws regarding marriage have confined themselves to the question as to what constitutes a legal marriage. The Supreme Court did what most laws relating to marriage have not attempted to do and in the process suspended a fundamental right of all HIVpositive citizens.

Another important point in this particular case is the fact that the petitioner had, to begin with tested positive as a voluntary blood donor. This test under the Blood Bank test protocol is an unlinked and anonymous test. It means that the Blood Bank does not concern itself with the identity of the donor, it only tests the blood for safety, and if found unsafe, discards the blood. The results are never divulged to the donor. The Hospital Z had taken this defence in the NCDRC. This fact alone indicates a violation of confidentiality by the hospital as a specific test on the individual under the protocol would involve pre-test and post-test counseling. This counselling is the only procedure that could have led the hospital to conclude that the patient is unwilling to divulge his HIV status to his prospective spouse. However the facts of the case show that others got to know of his medical condition before he himself reported for a specific test.

The judgement violates the well settled principle of law that the court shall not decide an issue not presented before it. It also violates the principles of natural justice by deciding the fate of the entire HIV+ community in a private case without giving them a notice.

Had the case been properly argued the Court could not have arrived at the erroneous conclusion that "AIDS is the product of indisciplined sexual impulse" thereby ignoring all other modes of transmission, like through infected blood and blood products. It is a dangerous precedent to set. If followed any judge can pronounce on matters not even brought before the Court. Apart from that, the moral proclivities of a judge should not stand in the way of implementation of laws and the application of well settled principles of law. In this case judicial activism has led to judicial excessivism. ❐

...Contd. from pg. 31

were, however, given notice in every case and heard throughout the proceedings.

The SC, it appears, took care to give notices to people who could bring and defend a charge of violation of *audi alteram partem*. The bias of the Court prevailed against the workers who would have been hard pressed in exercising this right.

In fact, the range of natural justice is so far reaching that it necessitates providing an opportunity to all categories of people, even those who have no direct legal standing, but whose interests are likely to be affected. It is imperative that all such people be given a chance to speak for themselves.

Eroding Judicial Credibility

Rules of natural justice should normally apply in every case irrespective of the outcome of the case, especially in cases of violation of fundamental rights. According to Seervai, "…it would be surprising if a requirement of natural justice was not binding on courts *stricto sensu* but was nevertheless binding on other adjudicating authorities."[15]

In cases where principles of natural justice are violated by lower adjudicating authorities the affected have the recourse of appealing to higher judicial bodies. But if the highest court in the land violates principles of natural justice people have nowhere to turn to. The only way out for them is to either disregard the verdict or in cases affecting larger interests, to supersede it by an Act of Parliament. Either option erodes the credibility and the legitimacy of the Supreme Judiciary.

Need to Review PILs

Therefore, the obvious answer to the question of what happens if the SC violates principles of natural justice is that its judgements can be overruled by an Act of Parliament.

However, it would be more appropriate if the Supreme Judiciary (to retain its credibility and dispense justice) constitutes a full bench to review all its PIL judgements - in which principles of natural justice stand violated - under Article 137 of the Constitution. For the review to be effective and just, notice should be issued to all affected parties and a reasonable opportunity should be given to them to state their case.

Moreover all future PILs should be treated as regular writ petitions or class action suits if people other than the petitioner are affected. The procedure adopted should also be the same as for a regular writ petition or class action suit. Even SC has also noted this in a judgement:

There is no provision under Order XXXV for any special procedure in respect of a public interest petition under Article 32. The petition will have to be served on the respondents who have a right to file a counter-affidavit. Although the proceedings in public interest litigation may not be adversarial in a given case, there can clearly be different perceptions of the same problem or its solution and the respondents are entitled to put forth their own view before the Court which may or may not coincide with the view of the petitioner. The Court may come to a view different from that of any of the parties.[16]

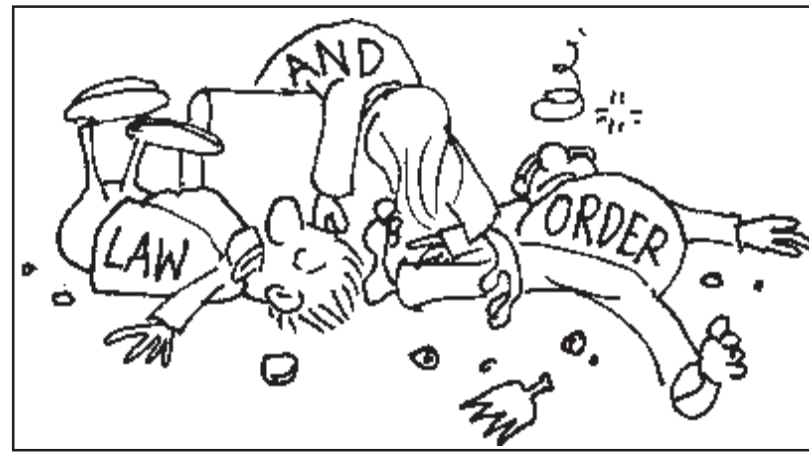
The necessity of following the due process of law in even PILs cannot be underestimated. This does not require a new Act. The procedures already exist and are diligently followed in regular litigation. There are three essential components of following procedure:

One, it must give notice to all concerned parties, which anyway is a part of the rules of natural justice. Second, it must ensure public accountability. Third, the Court must clearly state the reasoning by which it has arrived at a decision, so that the affected parties, and any others interested in the issue, are aware of how and why an order has been passed.

Due Process Requirements

Since PILs in the SC are filed under Article 32 (in High Courts under Article 226) of the Constitution, the State is a necessary party to the proceedings, but other affected parties are not given notices. These cases ordinarily would have been treated as Class Action Suits. A Class Action Suit means that when certain people have common rights that are threatened, one person, with the permission of the court, can file a representative suit on their behalf. Provisions regarding Class Action Suits already exist in order 1, Rule 8 and 8A of the Civil Procedure Code, 1908 and for writ petitions under Order XXXV of The Supreme Court rules, 1966.[17]

The problem that arises in not using the provisions of Class Action Suits and SC rules in writ petitions filed as PIL is that the petitioner is not bound to make other people, who may get adversely affected, parties to the



suit. It is left to the discretion of the Court as to whom to make parties. As we have seen in this report only those people who were in a position to defend the charge of violation of procedure have been made parties.

Also judges themselves are not infallible. They come with their own baggage of political, moral and religious convictions, which may affect the outcome of a case. Procedural safeguards are therefore necessary to avoid the undue impact of such extraneous matters. By following procedural safeguards they are forced to listen to all viewpoints and come to a reasoned judgement.

Moreover the larger question of public accountability in PIL has now assumed greater urgency as large sections are often immediately and adversely affected by judgements passed without having been given the opportunity to be heard. So long as the SC was just adjudicating between two private parties in a suit the question of public accountability did not arise (although even in adversarial litigation questions of public interest are often decided). The advantage of the procedure followed in adversarial litigation is that both sides are adequately represented.

In PIL too, in the beginning, the State adopted an adversarial position denying all allegations made by the petitioner. As a counter measure the Court had insisted that PIL is not adversarial in nature. According to Sathe:

> When the Judges spoke against the adversary procedure, they did not mean that any evidence would be believed without giving an opportunity to the other party to show that it was false. To that extent, the adversary procedure could not be dispensed with. However, what the Courts expected from the respondent, which was the State in most of the cases, was that instead of taking an adversary position and merely denying the allegation, it should help the Court to find out the truth.[18]

But now that the nature of PIL has changed, if conflicting concerns and interests of various groups have to be adjudicated then they should also be represented in the Court.

Duty to Give Reasons

The third important aspect is the duty to give reasons. It has now come to be accepted as an integral part of the principles of natural justice. The SC has over the years insisted that administrative and quasi-judicial bodies have to provide reasons for their orders.

Stating reasons is desirable in all cases, but its importance in PIL can hardly be over emphasized as by definition it affects the larger public. The SC has at times rejected petitions and intervention applications from groups, who were going to get directly affected by the outcome of the case, without assigning any reasons. There is no clear policy of permitting interventions. The policy for allowing interventions in PIL should be liberal so that all concerned interests are adequately represented.

Also, in such cases it should be incumbent upon the Court to cite reasons for its decision. It cannot and should not be allowed to whittle down to a dialogue between the State and the petitioners who, in many cases, come with their own preconceived ideas of a problem.

In the final analysis, the Courts must follow the due process of law in all cases and protect the fundamental rights of the people as mandated by the Constitution. ❐

This article has been extracted from the report titled "The Public Interest Litigation Hoax – Truth Before the Nation" by Shobha Aggarwal and published by the Public Interest Litigation Watch Group (PILWG), Delhi. ashobha@vsnl.com

Footnotes:

[1] The quote derived from the title of the book: C.N.Tate & T. Vallinder Eds., 'The Global Expansion of Judicial Power' (1995).

[2] People's Union For Democratic Rights v Union Of India, (1982) 3 SCC 235 at 242.

[3] Malik Brothers v Narendra Dadhich, 1999 (5) SCALE 212 at 214.

[4] Bandhua Mukti Morcha v Union of India, AIR 1984 SC 802 at 840.

[5] The President, Commonwealth Co-operative Society Ltd., Ernakulam v The Joint Registrar (General) of Co-operative Societies, Trivandrum, AIR 1971 KERALA 34.

[6] Olga Tellis v Bombay Municipal Corporation, (1985) 3 SCC 545.

[7] Ibid at 580-581.

[8] Paul Jackson, Natural Justice (2nd edn, 1979, First Indian Reprint 1999) at 133-137.

[9] Above n 6 at 582.

[10] Ridge v Baldwin [1963] 2 ALL E R 66 at 81.

[11] World Saviors v Union of India, 1996 (3) SCALE (SP) 32.

[12] Hariram Patidar v M.P. Pollution Control Board, 1996 (4) SCALE (SP) 7.

[13] D.P. Bhattacharya v West Bengal Pollution Control Board, 1996 (3) SCALE (SP) 41.

[14] Tarala V. Patel v Union Territory of Pondicherry, 1997 (3) SCALE (SP) 5.

[15] H.M. Seervai, Constitutional Law of India (4th edn, 1993) at 1761.

[16] Gaurav Jain and Supreme Court Bar Association v Union of India, (1998) 4 SCC 270 at 275.

[17] The Supreme Court Rules 1966, Order XXXV rule 10(1) 10. (1) Unless the Court otherwise orders, the rule together with a copy of the petition and of the affidavit in support thereof shall be served on the respondent not less than twenty-one days before the returnable date. The rule shall be served on all persons directly affected and on such other persons as the Court may direct.

[18] S.P. Sathe 'Judicial Activism (III) Growth of Public Interest Litigation: Access to and Democratisation of the Judicial Process', (1999) Vol.XI, No. 1 Journal of Indian School of Political Economy 1 at 9-10. ❐