



## Environment

### Water & Environmental Sanitation Network (WES-Net India)



## Solution Exchange for WES-Net India Consolidated Reply

*Query: Relevance of Public Interest Litigations for conflict resolution in water sector, from Arati Davis, Bangalore (Experiences).*

Compiled by Pankaj Kumar S., Resource Person; additional research provided by Ramya Gopalan, Research Associate  
14 September 2006

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**Original Query: Arati Davis, Svaraj, Bangalore**  
**Posted: 21 August 2006**

I work with a Bangalore based NGO which focuses on Integrated Water Resource Management in South India. We cover the four southern states with eleven local partner organisations to promote community management of natural resources, specifically water. Since the aim of our intervention is to provide sustainable community platforms for conflict resolution, our programmes give considerable emphasis to enable rural and urban communities to engage with existing government frameworks.

While working with these local field organisations, it has been my experience that more and more partners see the judiciary rather than the government as a promising venue for fostering change. For example, a lot of our work is focused around urban and peri-urban areas, where drinking water for communities is being directly impacted by industrial water use and pollution. Our partners increasingly view Public Interest Litigation (PIL) as a key solution for resolving local conflicts in the short term, and equitable distribution in the long-term.

However, the problem in using the PIL as a strategy for equity and conflict resolution is that small field NGOs lack resources for research and adherence to the legal process to sustain the PIL against typically larger and more 'powerful' opponents. Additionally, judgements by courts may offer short term, shortsighted or inappropriate solutions. For instance, closing down offending industries in a specific locale, with strict conditions on reestablishment, does not resolve the issue of relocation of the same industry to a different area or state. Finally, depending on the time taken for the case to be heard and resolved, NGOs who have filed cases are barred from continued agitation on the issue, which can ultimately work against the NGOs.

In the above context, I request members to please share experience on :

1. Examples where PILs have resulted in tangible benefits to poorest stakeholders or where PILs have proved to be barriers for ground level change.

2. Experiences, reactions, and opinions on the use of PIL for resolving water related conflicts and questions of distribution between multi-stakeholders with different inherent negotiating powers.
  3. Mechanisms and processes by which time, reach and enforcement of legal decisions can be made better.
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### Responses received with thanks from:

1. **V. Kurian Baby**, Socio-Economic Unit Foundation (SEUF), Kerala ([Response 1](#); [Response 2](#))
2. [Bikash Rath](#), Vasundhara, Bhubaneswar
3. [Rahul Banerjee](#), Aarohini Trust, Indore
4. [S.Janakarajan](#), Madras Institute of Development Studies (MIDS), Chennai
5. [Arnab Bhattacharjee](#), Prakritika Jalasampada Punnarudhar Abhijan, Cuttack, Orissa
6. [Saugat Ganguly](#), Gamana, Hyderabad
7. [Jasveen Jairath](#), CapnetSA, Hyderabad
8. [Jyotsna Bapat](#), Independent Consultant, New Delhi
9. [Pankaj Kumar S.](#), UNDP, New Delhi

*Further contributions are welcome!*

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### Summary of Responses

More and more water conflicts are reaching the judiciary for resolution. Is this bringing tangible benefits for the poorest? What are the learnings? This was the subject of the discussion on a query examining the relevance of using Public Interest Litigation (PIL) as a means of resolving water conflicts.

Members traced the **origin of PILs** to the failure of the executive and the legislative branches of government to address the substantive grassroots problems. Members pointed out that the judiciary undertakes activism only when someone files a PIL; thus, PILs and judicial activism are two sides of the same coin. PILs can also be understood as a barometer of public opinion about existing laws and policies, part of the process by which policies evolve to meet the needs of society.

Members listed several **PIL cases specific to water** and **other environmental cases** from Kerala, Orissa, Andhra Pradesh, along with several regional and national cases, which have brought significant benefits to vulnerable sections of society and significantly improved the quality of the environment. Prominent among the cases mentioned were the [Plachimada judgement](#), which helped local communities get a multinational to stop excessive extraction and pollution of water; another important case members discussed was that of vehicular pollution in [Delhi](#) leading to the court's directives to switch over to CNG judgement, resulting in drastic reduction in pollution. However, participants also noted that not all PILs filed receive a favourable response from the judiciary. In a number of cases (such as the Narmada and Interlinking of Rivers cases), the court did not adequately consider various expert groups' recommendations and therefore did not address the original concern of the PIL and in others the courts did not rule in favour of the poorest.

Discussing the reasons for **judgements not favouring** the needs of the vulnerable, respondents pointed out that many environmental cases pertain to specialized subjects, and the court often does not have expertise to understand the complexities involved. In some cases, the court has appointed technical advisory committees to assist it in reaching the decision, but this does not happen in all cases. Participants noted judgements are based on the current environmental legislation, which do not always reflect the actual ground conditions.

Members shared their experiences in using PILs to revolve water conflicts to list **factors contributing to success**. They contended prior to filing a PIL sufficient preparation is required, as courts are likely to accord a positive response only if the argument is cogent. In order to make a strong case, the agency filing the PIL must have an adequate understanding of the legal systems, a high level of motivation and minimum amount of resources to be able to see the case through. Moreover, an experienced lawyer with command over both the legal aspects and experience with the issue is another important success factor - members noted that this combination of skills and knowledge is not easily available. Additionally, PILs are most successful in cases where there was a clear "offender," which is not always the case when dealing with 'water litigations,' which tend to be more complex.

The group also discussed the issue of **post-ruling compliance** and stressed that even if the court delivers a favourable judgement the issue of implementation remains. Members cited cases in [Andhra Pradesh](#) on industrial pollution and the [Municipal Waste case](#) where even after the court judgement; state agencies have not implemented the ruling due to a insufficient staff, lack of the necessary skills and/or motivation. Thus, PIL rulings alone are not able to make a significant difference to systemic deficiencies. Respondents stressed the need for the litigating agency to have the authority and capacity to monitor the compliance on the judgement. Participants pointed that the long time in reaching a conclusion further increases the complexity of the problem at the ground level.

Discussing the **relevance of PILs** in resolving water conflicts, members felt that since PILs take a huge amount of resources and time, it is essential to prepare completely. They suggested that the process of negotiation be completely exhausted before filing a PIL. In case of a burning issue, respondents felt is also important to build public opinion, such as by collecting information through the Right to Information Act (RTI), using community radio, campaigns and creating strategic alliances between local governance institutions and public movements. Only after doing all of this, will filing a PIL have the desired impact, members argued.

Members put in a **word of caution** on the use of PILs. Firstly, some members felt that while PILs enhanced the accountability of various implementing agencies, in recent years the trend of the judiciary has been to uphold "development" over the needs of the vulnerable and displaced people. The prolific increase in the number of PILs in recent years has also made the mechanism of the PIL somewhat difficult, as courts now have to deal with a larger number of cases. Other issues members discussed were whether judicial activism is "delayed justice" or if PILs were a significant departure from the normal course of law. Participants quoted articles and pointed out how "judicial activism" sometimes intrudes on executive and legislative spaces; emphasising that the primary role of the judiciary is to ensure better governance through a more transparent and accountable bureaucracy.

In sum, the discussion revealed that while PILs have resulted in very positive outcomes in a number of cases, they are actually a symptom of larger systemic deficiencies and cannot be treated as a universal cure. Members concluded that the large amount of resources and energy required, the long gestation period, and the possibility of an unfavourable judgement notwithstanding all the preparation make PILs a "last resort" mechanism, to be used only after trying all other methods.

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## Comparative Experiences

### *Cases Specific to Water*

**Perumatty Grama Panchayat vs. State of Kerala** (from *V. Kurian Baby, Socio-Economic Unit Foundation (SEUF), Kerala*; [response 1](#))

The exploitation of water by Hindustan Coca-Cola Beverages Pvt. Ltd. at Plachimada, resulted in water sources from nearby wells and ponds to dry up causing deterioration of water quality, health and environmental problems, and acute drinking water scarcity. This gave rise to The Plachimada agitation started by adivasi women who forged alliances with local government bodies (gram panchayats) leading to the judiciary upholding the cause of the people. Read [more](#)

**M.C. Mehta vs. State of Orissa, Cuttack** (from [Bikash Rath, Vasundhara, Bhubaneswar](#))

In Cuttack residents' encountered health and sanitation problems because of sewage water clogging, sewage flowed directly into the river, and there was no sewage treatment plant. The Court ruled that Cuttack faced this crisis due to the inaction of the State in setting up a treatment plant to stop pollution entering the river. The Court directed the State to take immediate steps to prevent and control water pollution, and maintain water quality.

**Vellore Citizens' Welfare Forum vs. Union of India** (from [Rahul Banerjee, Aarohini Trust, Indore](#))

This landmark case, involved tanneries situated around the river Palar in Vellore, Tamil Nadu. A citizens group charged that they were discharging toxic chemicals in the river, thereby jeopardizing the health of the residents. The Supreme Court allowed the Vellore Citizens' Welfare forum to bring a case in order to protect the health of the Vellore residents. The Court asked the tanneries to close their business.

From [Ramya Gopalan, Research Associate](#)

**Attakoya Thangal vs. Union of India Lakshwadeep Islands**

The State administration evolved a scheme to augment the water supply- digging wells and drawing water from existing wells. Petitioners sought restraint as, ground water resources are limited, potable water is in short supply, and withdrawals with electric or mechanical pumps can deplete water sources, causing saline water intrusion. The Supreme Court directed CGWB to investigate aspects raised in the writ petition, and submit a report.

**Ambuja Petrochemicals vs. Andhra Pradesh Pollution Control Board (APPCB)**

The APPCB serviced one industry in the Patencheru belt of treatment plants with a notice for violating the Water (Prevention and Control of Pollution) Act. According to Board, the treatment plant (which belongs to a 'high pollution potential industries') was not in full operation and discharging partially treated effluents outside factory premises. The industry replied to the Board's petition. The High Court ruled that the Board had a mandate to take the necessary steps.

### *Cases on Other Environmental Issues*

**PIL in Municipal Solid Waste Management (MSWM)** (from *V. Kurian Baby, Socio-Economic Unit Foundation (SEUF), Kerala*; [response 2](#))

A PIL was filed before the Supreme Court of India seeking to direct all state and Urban Local Bodies (ULBs) to improve the MSWM situation. The Court, basing its ruling on expert recommendations, directed Grade I cities to improve waste management systems and the GoI to

frame appropriate rules. The Government accordingly framed [MSWM \(and Handling\) Rules 2000](#), however despite the mandate that only around 12-15% of cities adhere to all the Rules.

From [Rahul Banerjee](#), *Aarohini Trust, Indore*

### **Rural Litigation and Entitlement Kendra (RLEK) vs. State of Uttar Pradesh**

This is the first case involving issues relating to the environmental and ecological balance. RLEK brought it on behalf of the Mussoorie Hill community. The Supreme Court decision prohibited limestone mining quarries to continue operating, stating they have adverse effects on the environment. The Court also held that the right to unpolluted environment, and preservation and protection of nature's gifts is a right under Article 21 of the Constitution of India.

### **Indian Council for Enviro-Legal Action vs. Union of India**

In Bichhri village, problems began when Hindustan Agro Chemicals Limited started producing Oleum and Single Super Phosphate. Subsequently Silver Chemicals and Jyoti Chemicals produced 'H' acid in plants located within the same complex resulting in highly toxic effluents. The Supreme Court cautioned industries against discharging inherently dangerous Oleum and H acid, holding that this type of pollution infringes right to wholesome environment and ultimately right to life.

### **M.C. Mehta vs. Union of India**

Mainly with the objective of protecting people's health in Delhi, the Supreme Court issued directions to persuade government authorities to adopt steps to reduce the air pollution. The Supreme Court held that air pollution in Delhi caused by vehicular emissions, violates right to life under Article 21 of the Constitution and directed all commercial vehicles operating in Delhi to switch to using Compressed Natural Gas (CNG) to safeguard health of the citizens of Delhi.

### **Church of God (Full Gospel) in India vs. KKR Majestic Colony Welfare Association**

The KKR Majestic Colony Welfare Association registered a complaint with the Tamil Nadu Pollution Control Board against the Church of God, claiming that the Church by using loudspeakers, drums and other instruments, during its services was causing 'noise pollution,' disturbing the residents of the colony. The Association also lodged complaints with the Chief of Police. The Supreme Court ruled in their favor, stating 'noise pollution' is a violation of Article 21.

### **Indian Council for Enviro Legal Action and Others vs. UOI and Others** (from [Saugat Ganguly](#), *Gamana, Hyderabad*)

This case relates to industrial pollution of the environment in Medak District, Andhra Pradesh. In 1997, the Supreme Court ordered the CPCB and Andhra Pradesh Pollution Control Board (APPCB) to formulate some immediate and long-term steps to prevent industrial pollution. Despite efforts from various quarters, many of these industries are still polluting the environment.

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## **Related Resources**

### ***Recommended Documentation***

From *V. Kurian Baby*, *Socio-Economic Unit Foundation (SEUF), Kerala*; [response 2](#)

### **The Bio-Medical Waste (Management and Handling) Rules, 1998**

Ministry of Environment and Forests, Notification, New Delhi; July 20, 1998

<http://www.envfor.nic.in/legis/hsm/biomed.html>

*The Bio Medical Waste (Management and Handling) Rules, 1998 lists the categories of wastes and comprehensive guidelines on the management of BMW in the country.*

### **Bio-Medical Waste (Management and Handling) (Amendment) Rules, 2003**

Ministry of Environment and Forests, Notification, New Delhi; September 17, 2003

[http://www.envfor.nic.in/legis/hsm/so-1069\(e\).html](http://www.envfor.nic.in/legis/hsm/so-1069(e).html)

*This notification is an amendment to the 1998 Bio-Medical Waste Management and Handling Rules*

### **Perumatty Grama Panchayat vs State of Kerala** (from *V. Kurian Baby, Socio-Economic Unit Foundation (SEUF), Kerala; [response 1](#)*)

Environment Law Alliance World wide (ELaw), 2003

<http://www.elaw.org/resources/text.asp?ID=2360>

*Provides details of the Coca-Cola groundwater exploitation case and the judgement ruled by the Court*

### **Report on the Multistakeholders' Consultation on Sal Seed Procurement, Management and Trade in Central India** (from *Bikash Rath, Vasundhara, Bhubaneswar*)

RCDC Centre for Forestry and Governance, Bhubaneswar & The Solvent Extractors' Association, Mumbai, 25th – 26th May 2006, Raipur

Click [here](#) for PDF (Size: 455 KB)

*Provides background on the sal seed procurement case and the related policies, issues and challenges recorded as proceedings of the consultation held at Raipur*

### **Supreme Court and PIL-Changing Perspectives under Liberalisation** (from *Rahul Banerjee, Aarohini Trust, Indore and [Pankaj Kumar S.](#), UNDP, New Delhi*)

By Prashant Bhushan; Economic and Political Weekly Commentary; May 1, 2004

<http://www.epw.org.in> (Free registration required)

*Discusses environment cases particularly Narmada Bachao Andolan, which questions the paradigm of modern development and the inability to uphold demands of the petitioners*

From *[Pankaj Kumar S.](#), UNDP, New Delhi*

### **Environmental Litigation in Calcutta**

By Dembowski, H, Economic & Political Weekly, January 2-9, 1999.

<http://www.epw.org.in> (Free registration required)

*Contends that in judging PILs, the judiciary is proceeding largely on a case-by-case basis rather than applying an overarching, consistent body of law on environmental concerns*

### **Some Constitutional Dilemmas**

By Ramaswami Iyer; Economic and Political Weekly; May 27, 2006

<http://www.epw.org.in> (Free registration required)

*Paper discusses PILs in the overall context of amendments to the Constitution and role dynamics between the legislative, executive, & judiciary through cases in the water arena*

From *[Sarah Figge](#), UNDP, New Delhi\**

### **Green Decisions: Summary of Some Important Decisions**

Bhat Sairam, National Law School of India University, Bangalore

<http://www.nls.ac.in/CEERA/ceerafeb04/html/documents/greensummaries.htm>

*Provides briefs on the content of each judgment towards protection and development of environment and related laws*

### **Genesis of Public Interest Litigations**

Parivesh: Central Pollution Control Board, Ministry of Environment and Forests, Government of India

<http://www.cpcb.nic.in/legislation/ch1dec02a.htm>

*Provides a brief on Constitutional provisions and laws on environment in India*

### **Water Fall Outs**

Down To Earth Supplement, Centre for Science and Environment (CSE)

<http://www.cseindia.org/dte-supplement/industry20040215/fall-outs.htm>

*Highlights inter-sectoral conflicts and practice of "zero sum game of water management,"  
"where authorities increase water supply to one user by taking it away from another"*

### **Cauvery, Courts and Some Larger Questions- Elusive Search for Judicial Reason**

By Videh Upadhyay; Economic and Political Weekly Commentary; August 31, 2002

<http://www.epw.org.in> (Free registration required)

*Discusses Cauvery water dispute and how forums established for participatory discussions lack necessary framework to be meaningful in absence of speedy resolution*

### **Conflicts Over International Waters**

By Rakesh Tiwary; River Water Sharing Issues, Economic and Political Weekly; April 29, 2006

<http://www.epw.org.in> (Free registration required)

*Discusses the factors of conflict around international waters through the example of Ganga water dispute between India and Bangladesh*

\* *Offline Contribution*

From [Pankaj Kumar S.](#), Resource Person

### **Changing Judicial Power- Courts on Infrastructure Projects and Environment**

By Videh Upadhyay; Economic and Political Weekly Commentary; October 28, 2000

<http://www.epw.org.in> (Free registration required)

*Discusses challenges and decisions taken on a number of public interest petitions filed in the recent past challenging large infrastructure projects*

### **Customary Rights Over Tanks- Some Plain Talking on Limits of Customs**

By Videh Upadhyay; Economic and Political Weekly Commentary; November 1, 2003

<http://www.epw.org.in> (Free registration required)

*Discusses the verdict in the Dhimar Fishermen case, which emphasizes the point that customs are a source of law only when recorded in statutes or recognized by courts*

### **Laws, Policies and Practices in Jharkhand**

By Nandini Sundar; Economic and Political Weekly Special Article; October 8, 2005

<http://www.epw.org.in> (Free registration required)

*This paper highlights some of the critical issues that have emerged from studies of laws governing natural resource management and decentralization in the state of Jharkhand.*

From [Ramya Gopalan](#), Research Associate

### **Role of PIL in Environment Protection in India**

Vijay Oak; Legal Services India.Com

<http://www.legalserviceindia.com/articles/peiln.htm>

*Discusses cases wherein the tool of PIL is used for the cause of environmental protection*

### **Environmental Justice: Emerging Trends**

By Colin Gonsalves; Environmental Support Group

Click [here](#) to read article

*Discusses law & policy relating to environmental protection, developments and problems of PIL including various cases related to the environment and specifically on water*

### **PIL Plea on Sharing of Neyyar Water**

The Hindu, Tamil Nadu; October 8, 2005

<http://www.hindu.com/2005/10/08/stories/2005100806240400.htm>

*Write up on the PIL petition seeking a direction to Kerala and Tamil Nadu governments on sharing waters of the Neyyar dam in Kerala.*

### **Mahakali Impasse and Indo-Nepal Water Conflict**

By Dipak Gyawali and Ajaya Dixit, Economic and Political Weekly Special Article; February 27-March 5, 1999

<http://www.epw.org.in> (Free registration required)

*Discusses treaty between Governments of Nepal and India on Integrated Development of Mahakali River including Sarda and Tanakpur Barrage and Pancheshwar Project*

### **Conflict-Resolution: Three River Treaties**

By Ramaswamy R Iyer; Economic and Political Weekly Special Article; June 12, 1999

<http://www.epw.org.in> (Free registration required)

*Paper discusses conflict-resolution of water resources in south Asia structured on The Indus Treaty 1960 (Indo-Pak), The Mahakali Treaty 1996 (Indo-Nepal), & Ganges Treaty*

### **Was the Indus Waters Treaty in Trouble**

By Ramaswamy R. Iyer; Economic and Political Weekly Commentary; June 22, 2002

<http://www.epw.org.in> (Free registration required)

*Discusses the Indus Treaty between India and Pakistan having an international reputation internationally of being a successful instance of conflict-resolution.*

### **Inter-State Water Disputes Act 1956- Difficulties and Solutions**

By Ramaswamy R. Iyer; Economic and Political Weekly Special Article; July 13, 2002

<http://www.epw.org.in> (Free registration required)

*Argues that repeal of the Inter-State Water Disputes Act, as recommended by The National Commission to Review the Working of the Constitution was ill advised*

## ***Recommended Organizations***

From [Ramya Gopalan](#), Research Associate

### **Janhit Foundation**

C-28, Shastri Nagar, Meerut, Uttar Pradesh; Tel: 91-121-2763418/2602753; Fax: 91-121-2763418; [info@janhitfoundation.org](mailto:info@janhitfoundation.org); <http://www.janhitfoundation.org/pils.htm>

*Recommended as an organization that has filed various Public Interest Litigations (PILs) over the years for the protection of environment of Meerut*

### **Wildlife Protection Society of India (WPSI)**

S-25, Panchsheel Park, New Delhi 110017; Tel: 91-11-41635920/21; Fax: 91-11-41635924;

[http://www.wpsi-india.org/projects/public\\_interest\\_litigations.php](http://www.wpsi-india.org/projects/public_interest_litigations.php)

*Recommended for the PILs filed by them bringing a new focus to tackling India's growing wildlife crisis*

## ***Recommended Websites***

**The Environmental Law Alliance Worldwide (E-LAW)** (from [Ramya Gopalan](#), Research Associate)

<http://www.elaw.org/search/results.asp?words=M.C.+Mehta+vs.+Union+of+India&x=25&y=20>

*Provides resources on various cases pertaining to the environment and specific to water both in India and world-wide*

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## Responses in Full

**[V. Kurian Baby](#), Socio-Economic Unit Foundation (SEUF), Kerala** (response 1)

The emergence of judicial activism coupled with overall deterioration in governance standards, have contributed to the surge in PIL as an alternative redressal mechanism in India. Obviously, the judiciary holds significant credibility and the governments at political and administrative levels often encourage PIL indirectly, by shying away from their responsibility in decision-making. This is also true even for inter-state water sharing and ensuring equity and riparian rights.

The unfortunate part of the experience is that, unless the enforcement machinery is also taken into confidence as a partner, many a times the litigant has to approach the court again for enforcement leading to protracted legal/bureaucratic process involving substantial energy and costs.

The Plachimada agitation started by adivasi women in Palakkad district of Kerala, developed into a strong movement against a multinational for fighting against over exploitation and pollution of ground water (resulting in water deprivation in the near by area). Alliances developed with the local government (Gram Panchayats) led to a final verdict from the judiciary upholding the cause of the people. The example serves as an inspiration and shows the process that can be followed for resolving water-related conflicts. It also shows how public movements can forge alliances with political and governmental bodies and result in settlement of conflicts through judicial directives.

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**[Bikash Rath](#), Vasundhara, Bhubaneswar**

As far I can recall, a PIL in the Orissa High Court resulted in putting pressure on the government to take steps in the context of resolving water and sanitation problems in Cuttack district. However, I do not have the details.

Our organisation has been directly or indirectly involved in some PILs related to forest conservation and livelihood of the poor. In 1999 a successful achievement of the organisation was in the context of sal seed procurement. Challenging the state policy, a sal seed procurer had filed a case in the High Court (HC), which resulted in a stay order on procurement of the seeds. As the seeds are perishable, and need to be disposed off as early as possible, the stay order created a havoc as the primary collectors apprehended that their collection would go waste. Another PIL filed under this situation requested the HC to re-look at the stay on procurement, keeping in mind the livelihood of the poor. It succeeded and the HC directed that procurement of sal seeds be started again.

Our experience with PIL indicate the following:

- Matters like this are very specific and uncommon subjects for the judiciary, hence unless the applicant has sufficient and systematic evidence and the lawyer is competent in following up the case, it is difficult to get justice in time. Unfortunately, such expertise is lacking in most cases.

- Further, the judiciary is now burdened with more and more PILs; so PIL as a tool may lose its importance and distinction in the long run.
- In the Cuttack case, the HC is based at Cuttack and the lawyers too belong to the place; so it might be convenient for all concerned to take up the issue seriously. However, not all cases are that fortunate.

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**Rahul Banerjee, Aarohini Trust, Indore**

The Indian judiciary has responded positively on the whole to PIL on environmental protection in many cases -

1. In **Rural Litigation & Entitlement Kendra vs. State of U.P.** (AIR 1985 SC 652) the Supreme Court prohibited continuance of mining operations, terming it to be adversely affecting the environment.
2. In **Indian Council for Enviro-Legal Action vs. Union of India** (AIR 1996 SC 1446), the Supreme Court cautioned the industries discharging inherently dangerous Oleum & H acid. The court held that such type of pollution infringes right to wholesome environment & ultimately right to life.
3. In another case **M.C. Mehta vs. Union of India** (AIR 2001 SC 1948) the Supreme Court held that air pollution in Delhi caused by vehicular emissions violates right to life under Article 21 & directed all commercial vehicles operating in Delhi to switch to CNG fuel mode for safeguarding health of the people.
4. In **Church of God (Full Gospel) in India vs. KKR Majestic Colony Welfare Association** (AIR 2000 SC 2773) the Supreme Court observed that noise pollution amounts to violation of Article 21 of the Constitution.
5. In landmark case **Vellore Citizens' Welfare Forum vs. Union of India** (AIR 1996 SC 2715) the Supreme Court allowed standing to a public spirited social organization for protecting the health of residents of Vellore. In this case, the tanneries situated around river Palar in Vellore (T.N.) were found discharging toxic chemicals in the river, thereby jeopardising the health of the residents. The Court asked the tanneries to close their business.

However, in some cases like the famous Narmada Bachao Andolan, where the basic paradigm of modern development was questioned, the Supreme Court has not been able to uphold the radical demands of the petitioners (Bhushan, P (2004): *Supreme Court and PIL: Changing Perspectives Under Liberalisation*, Economic and Political Weekly, Vol. 39 No 18)

Our own experience here with the High Court of Madhya Pradesh with smaller matters has shown that only if the petition is supported by thorough research and argued cogently by a senior lawyer does it get accepted. Even after this, getting the authorities to comply with the Court's orders is a difficult proposition requiring further litigation, as Bikash Rath has averred. All in all, PIL should be filed only as a last resort because it is extremely expensive and time consuming and out of reach of poor people. Only if an organisation has good financial support, which is very rare for organisations fighting for the poor, can a PIL bring them relief.

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**S. Janakarajan, Madras Institute of Development Studies (MIDS), Chennai**

It is necessary to discuss what is judicial activism. All judgments - whether one calls it judicial activism or otherwise, are delivered only according to what is permitted in law. The so-called judicial activism are in a way *delayed justice* and I do not see any activism in them.

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**Arnab Bhattacharjee, Prakritika Jalasampada Punnarudhar Abhijan, Cuttack, Orissa**

Your query asks whether PIL has proved to be an effective instrument to resolve conflicts in grass roots development activities. Many activists may agree that litigation is a form of action which cannot bring a final solution to any conflict, and in every litigation the two parties need to converge at a point for resolution. However, if they take parallel lines, the case may drag on. It is also crystal clear that after the decision of the court of law, you cannot do anything more about the said decision. So it is not a proper solution to any conflict, rather we can adopt the process of Public interest Negotiation(PIN) to resolve the conflict as a core strategy. The public issue would be resolved in this method of negotiation, which may take time but the outcome will be helpful both in the short term and in the long term. PIL is the last weapon – and I would call it the BRAHMASTRA, before applying which, a lot of ground level preparation needs to be done in proper way with adequate consultation.

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**V. Kurian Baby, Socio-Economic Unit Foundation (SEUF), Kerala (response 2)**

In Continuation to the ongoing discussions, I would like to site the case of PIL in municipal solid waste management (MSWM) in India. A PIL was filed before the Supreme Court of India seeking directions to all States and Urban Local Bodies (ULBs) to improve the pathetic SWM situation expeditiously. The Hon'ble Supreme Court, based on the recommendations of an expert panel, directed all Grade I cities to improve the systems of waste management and directed Government of India to frame appropriate rules for the management of municipal solid waste in the country. The Ministry of Environment and Forest, accordingly framed "Municipal Solid Waste (Management and Handling) Rules 2000 under the Environment Protection Act, 1986 making it mandatory for all Municipal authorities in the country irrespective of size and population to implement the directions contained in the rules by 31st December, 2003. However, the overall adherence to the seven steps, right from door to door collection to process and disposal, on an average still remains around 12-15%, on account of various reasons.

The experience shows that, PIL though a very potent instrument in specific cases, in itself may not make any significant dent into the systemic/structural inefficiencies like issues of institutional weakness and weak enforcement. It can at best give a shock necessary as a wake up call.

I do agree with Prof. Janakarajan that "judicial activism' is always within the permissible law. However, it occurs when the judiciary departs from the established precedent and opens new windows to the law through interpretations and judgments that make the law itself dynamic.

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**Saugat Ganguly, Gamana, Hyderabad**

PILs, if used, should be used at the last phase of a process of conflict resolution. The following points should be taken care of before taking the issue to the court:

1. The petitioner has to do a lot of homework before filing the case. Judicial path should not be opted for if the chances of winning are slim. After judicial intervention, there is very little scope to take the issue to a different platform.
2. The petitioner should have adequate resources, and a high enough motivational level to persist with the case while it goes on for a long time.

Our experience with legal interventions in an industrial pollution related problem in Medak District of Andhra Pradesh (**Writ Petition (Civil) No.1056/1990 (Indian Council for Enviro Legal Action & Others Vs. UOI & Others)**) can be summarized as:

1. Even if the Court gives a decision in favour of the petitioner, the subsequent problem of implementation remains. In the above case, the Supreme Court ordered the Central Pollution Control Board (CPCB) and Andhra Pradesh Pollution Control Board (APPCB) to formulate some short term, mid term and long-term steps to prevent industrial pollution, way back in 1997. Despite all efforts from various quarters, many industries are still polluting the environment.
2. The affected community/petitioner should also have the authority and capacity to monitor the progress in implementation of the Court orders. We feel that government institutions - because of the lack of manpower, skill and willingness - are not able to do this job properly.
3. In some cases, the same cause affects people from various aspects of life at different times. Usually, although the problem looks straightforward in the beginning, the complexity of the problem increases with time. For example, beginning from just a problem of infertility of land and lack of safe drinking water caused by industrial pollution, the above quoted issue has now taken new dimensions like destruction of other forms of livelihood (e.g. fish in lakes being killed by illegal discharge of industrial effluents into the lakes), illegal sand filtration in agricultural lands and other social problems. This has happened due to the long drawn nature of the legal battle without an actual resolution of people's problems.

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**Jasveen Jairath, CapnetSA, Hyderabad**

PIL is useful and effective when there is a clearly identified offender, as defined/existing by the law - and can be undertaken by an agency that is "literate" about the process/procedures of PIL. When complementing a social/mass movement (even at a local level) it can create pressures that discourage repeating of such actions.

However - in case of domestic sanitation - the "adversary" is some times diffused - very often it also comprises certain constituencies within the civil society that makes targeted legal action difficult. Secondly - the unsanitary situations that we witness in all our cities/towns are a result of planning failure. It is difficult to use legal tactics in such situations as the problem has a complex origin.

Publishing information on the role of offending parties (public and private), using RTI for seeking information on the failure of government departments to perform along with media support and the use of community radio and campaigns may provide a more effective method for creating public pressure, which can then be followed by a well-publicized PIL with strong social support.

Legal actions taken after requisite social mobilization tend to create a more powerful impact.

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**Jyotsna Bapat, Independent Consultant, New Delhi**

I would say there are two ways of looking at PIL. Firstly, the most popular and useful way in which NGOs and social activists are making use of the PIL is to ensure accountability of service delivery by the relevant public authority for solid waste management, and maintenance of water supply and local drainage systems.

Secondly and more importantly, the PIL is used to rectify areas where policy for a sector are still evolving. Thus using PILs, a pattern of complaints slowly emerges, which then provides guidelines for what is missing and where policy changes need to be incorporated.

In my opinion, it is the latter function of a PIL that is more relevant in the long run. Thus a PIL is a barometer of social discontent in the public service sector and it is important that the mechanism be kept alive.

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**Pankaj Kumar S., UNDP, New Delhi**

In addition to the points already discussed, I wish to bring to members' notice the following points made in some papers in the Economic & Political Weekly on the PIL issue:

**1. Paper by Bhushan, P, "Supreme Court and PIL", Economic & Political Weekly, May 1, 2004.**

The paper discusses three cases related to water conflicts - Narmada Bachao Andolan, Tehri Dam and Interlinking of rivers. In all three cases, Bhushan finds the court favouring 'development' over the rights of oustees.

**2. Paper by Dembowski, H, "Environmental Litigation in Calcutta", Economic & Political Weekly, January 2-9, 1999.**

The author contends that in judging PILs, the judiciary is proceeding largely on a case by case basis rather than applying an overarching, consistent body of law on environmental concerns. In fact, at times we see that a change of judges may radically change the net outcome of Litigation. He feels that this is because there is a huge gap between Environmental Legislation and the reality on the ground. The author feels that the only way to ensure that this gap reduces is for the judiciary to improve governance by making the bureaucracy more transparent.

**3. Paper by Iyer, Ramaswamy R, "Some Constitutional Dilemmas", Economic & Political Weekly, May 27, 2006.**

The paper discusses PILs in the overall context of amendments to the Constitution and role dynamics between the legislative, executive, and judiciary. In the water arena, it discusses the cases of Interlinking of Rivers, Narmada, and setting up of the Central Groundwater Authority. It does not go into the merits of the judgements given by the court, but questions whether these judgements can be seen as instances of judicial activism or as encroachment of the executive and legislative spaces. Iyer also feels that while PILs have delivered some very good results, they stem from gaps in good governance, responsible and responsive legislatures, and from ensuring a good and easily accessible system of justice.

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**Many thanks to all who contributed to this query!**

*If you have further information to share on this topic, please send it to Solution Exchange for WES-Net at [se-wes@solutionexchange-un.net](mailto:se-wes@solutionexchange-un.net) with the subject heading "Re: [se-wes] Query: Relevance of Public Interest Litigations for conflict resolution in water sector, from Svaraj, Bangalore (Experiences). Additional Response."*

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