

The origins of PIL

PIL is a term of US origin. In the US, PIL means 'Public Interest Law'. But, in Bangladesh it means 'Public Interest Litigation', which is one of the tools used in a number of countries including the US in PIL movement. In this paper, I prefer to go for using the term for Public Interest Law relying on its original meaning.

Some of the PIL activities in countries of the world have been influenced by the PIL movement in the US, which had a particularly productive period in the 1950s, 1960s and 1970s. The US experience drew attention to the potential for law to serve as an instrument for change, and began the processes of thinking law not simply as a method of dispute resolution, but also as an instrument of social justice.

Different terms including 'alternative law', 'developmental law' and 'structural legal aid' have been used interchangeably with 'public interest law'. Senator Jose W Diokno of the Philippines identified the major characteristics of what is often called 'public interest law' saying, '.... development requires a different type of legal aid.... concentrating on public rather than private issues, intent on changing instead of merely upholding existing law and social structures, particularly the distribution of power within society'.¹

Law framework

Law or a law-related framework is used in the PIL movement in furtherance of its objectives. Law, if used creatively, can be one source, among a number of sources, which enables people to mobilize and engage in positive action to better their lives. The amount of time and resources PIL groups spend working within the state-administered legal system depends on the nature of that system. If the rule of law is upheld in a country and the legal system commands credibility, then there will be a tendency to use the formal legal mechanisms within that system. Where the rule of law is absent, and/or the legal system does not command much credibility, PIL groups will tend to work outside the system, although again, they may, on occasion and in a specific context, use a particular legal mechanism or channel.

For example, the legal system has more credibility in some former British colonies. In Bangladesh, India, Sri Lanka and Malaysia, there has been a tendency to work within the confines of the state-administered legal system. While this may have some positive aspects, it has also generated some negative ones. Except perhaps in India, few groups in the other countries have looked for new and imaginative ways of using law and law-related strategies. By contrast, in Indonesia and the Philippines, where public institutions, including the judiciary, do not command much confidence, there has been a search for other, more legitimate and credible institutions.² There, by refusing to stick within the confines of the formal legal system, the public interest law movement has been more creative and dynamic.

Issues in PIL

Unlike mainstream law, PIL is not oriented to the individual nor does it deal with a range of 'single' disputes. PIL is invariably group-oriented. It deals with the assertion of group or

collective rights, involves questions of injustice pertaining to a group or collectivity, or may involve a legal action where an individual is representative of a group. PIL sees in this group dimension to its work the opportunity to make more profound structural changes in society and initiate larger ripples of change.

The intent on 'changing instead of merely upholding existing law and social structures' often distinguishes the PIL work from, for example, many governmental legal aid schemes which provide legal services to underserved or disadvantaged sectors of society, but may not intend, in doing so, to change existing law and social structures or to challenge the distribution of resources and power in the society.

This intent has brought PIL groups into conflict with governments. Indeed, many NGOs all over the world, in Bangladesh as well, have emerged as governments have shown themselves incapable of promoting positive social change and eradicating patterns of unequal distribution of resources and power.

The socio-economic context in which PIL groups function is crucial to their work. The groups contend with unequal development patterns and fighting unjust socio-economic policies and see as one of their objectives the redesigning of the legal map to promote in their view a more equitable system of legal relations. Matters relating to access to credit, marketing schemes, land ownership and use, land tenure and production-sharing systems are matters of concern to them, as are questions of squatters' rights, access to sanitation and water, environmental rights, and the rights of indigenous or tribal peoples.

PIL has also flourished in countries of the world, because it provides a way for civil society to become actively involved in questioning public decision-making, including decisions on political structure and democratic space. It provides a way to challenge and change major public policy decisions and campaign for social, economic and political reform.

Tools of PIL

A range of different tools is used in PIL movement and these are quite dependent upon the context within which the PIL group works. The use of these tools does not automatically qualify an organization as a PIL group, but a survey of the tools is helpful to understand the range of ways in which PIL work towards their goals.

Public Interest Litigation

Public interest litigation is commonly used and important tools of the PIL movement. Litigation that deals with group issues and/or promotes social change is used most frequently where the formal legal system commands a degree of credibility. Public interest litigation is perhaps the most developed in India, where it has been used in a particularly vibrant way. Public interest litigation is also used in Bangladesh and a number of countries to test the constitutionality of legislation. The writ petition that challenged the Jatiya Sangsad Reserved Seats for Women (Election) Act is the most recent example of such litigation in Bangladesh.

Public interest litigation began to emerge in India around the late 1970s and early 1980s, when the Indian judiciary responded in a sympathetic way to the initiatives of Indian social action groups, journalists and scholars.³ It became possible for any member of the public, not only public interest groups, to initiate litigation by merely addressing a letter to a judge. In this way a number of public interest issues affecting prisoners, workers and children were brought to the attention of the court.

Three features came to characterise this litigation in India:

1. An expansion of the doctrine of locus standi, which permitted any bona fide petitioner to bring matters of public interest before the court. The petitioner was not required to show that he or she was personally affected;⁴
2. Dispensing with formal court procedures for the commencement of such actions that could be initiated by writing a letter to the court, and that would be converted into a formal petition; and
3. The use of novel methods to gather facts. Often the court appointed a socio-legal commission of inquiry to investigate the disputed facts and submit a report to the court.

It has been used to impose sanctions and claim compensation from government. The concept of public interest litigation has been mooted for expression of the voiceless, disadvantaged, weaker, oppressed and those unable to gain access to the court of law and justice to ventilate their grievances.

Legal Advice

Legal aid and advice to groups is often part of PIL movement. This assistance may often be provided by paralegals, law students and lawyers and sometimes by media as well. To the extent that through this advice the PIL groups try to give target communities the capacity and confidence to use the legal process and legal institutions, it shares some similarities with community legal education.

Paralegals

The role of paralegals in PIL in most countries reflects PIL's preoccupation with changing social structures, particularly the distribution of power within society. These paralegals (unlike their counterparts in the US) are often members of the target group who are given a basic training in the law. The heavy use of non-lawyers within PIL in countries serves to demystify the law and make knowledge of the law and legal tools more accessible to the community.

Many PIL groups have engaged in the training and deployment of paralegals in a very successful way. In Peru, paralegals have been used effectively in combating gender-based discrimination. Paralegals have helped disadvantaged communities with such routine matters as the procurement of birth certificates and identity cards and also with more complex matters like lodging sexual assault complaints.⁵

Legal Research

Legal research is also one of the major tools in PIL. PIL groups have tried to develop critical and applied legal research. One of their tasks has been to investigate and review, where appropriate, some of the fundamental assumptions of the law and the legal system. Their research also includes what has come to be termed socio-legal research, a combination of experimental and theoretical study. This has resulted, among other things, in monitoring and documenting the impact of development projects or laws on the lives of communities. Frequently the research of PIL groups has been multi-disciplinary employing sociologists, political scientists, anthropologists and economists. This multi-disciplinary approach represents a sharp break from traditional legal research, which has tended to be sceptical about the contribution non-lawyers can make to the world of law.

In India, through this type of research, scholars have developed critiques of court procedures and concepts such as locus standi, which have, in turn, led to changes in the way the judiciary perceives these ideas. Thinking has also emerged in relation to the design of new and innovative remedies. Another area, which has felt the impact of this type of research, is custodial rape, where the burden of proof has been reversed so that the police must provide evidence that a rape did not occur rather than the woman having to prove that she was raped.