CURBING MEDICO-LEGAL ACTIVISM

The bill to control public interest litigation would have had serious repercussions for medical activists, writes ***Vijay Thawani***

The government seems to have given up its efforts to introduce in Parliament the Public Interest Litigation (PIL) Bill, 1997, to rein in the judiciary in the garb of stopping the so-called flood of frivolous public interest litigations.

A draft of the proposed bill, then pending before the Cabinet for approval, suggested a mandatory interest-free deposit of Rs one lakh for every PIL in the Supreme Court and Rs 50,000 in the High Court. The deposit would have been refunded, at the discretion of the court, if the petitioner won the case. However, if the court found a petition frivolous, the petitioner would have not only forfeited the deposit, he would also have attracted a punitive fine. The draft proposal sought to cover not only prospective PILs but existing cases as well.

The note to the Cabinet stated, "The judiciary has digressed from its traditional duties and functions as an interpreter of the Constitution and the laws and entered into a field in which it has no competence or safe standards for judicial action... (It) has failed to recognise that it cannot be a substitute for the failure or irresponsibility of other branches of the government and start delivering increasingly legislative or administrative judgements."

The law ministry said it contemplated this legislation "to regulate" PIL, the profligacy of which has been thought to be "choking" the judicial system. Expressing concern over the huge back-

WHY THE PIL BILL DIED A NATURAL DEATH

It is easy in a society plagued with horrific ills to get carried away with the notion that public interest litigation (PIL) is a miraculous solution to these problems. It is true that public outrage did play a crucial role in the Supreme Court taking up petitions on behalf of undertrials, children, women, mentally ill persons, pavement dwellers and so on, expanding the notion of the litigant's "standing", and even on its own initiative converting letters and press reports into petitions.

However, PIL has been, at least in part, a post-Emergency image-building exercise for a judiciary trying to redeem itself for earlier caving in to government pressure. It is also often a forum for judges to reserve their place in history by delivering lofty judgements — which are almost always ignored thereafter.

Some months ago, the union law ministry announced it would be introducing a bill in Parliament to amend the Constitution in order to curb the use of PIL. The announcement created an uproar and filled pages of newsprint — for a while. The bill was never tabled in Parliament, though it could presumably turn up in the future.

In fact the announcement should be seen in the context of the on-going tussle for supremacy between the executive and the judiciary. Note that the law ministry's announcement was made at the height of the *hawala* litigation, which had been portrayed by the press as proof that the judiciary was the one working arm of the state. Litigants in the *hawala* litigation alleged that huge pay-offs had been made to politicians of different parties, and documented in diaries. The hawala case implicated many (particularly Congress) politicians. It is another matter that they may ultimately go Scot-free.

It is not coincidental that the bill dropped out of the news once the Delhi High Court decided that the Jain diaries, the basis for the *hawata* litigation, did not constitute fool-proof legal evidence. At the same time, the judiciary's credibility received a substantial setback when the Supreme Court Bar Association levelled charges of misconduct at Justice MM Punchhi, next in line for chief justice of India.

The announced move to curb PIL was part of the executive's strategy to caution the judiciary against 'excessive activism'; it was also an exercise by the United Front to placate its Congress supporters. Finally, the bill would have also furthered the executive's agenda of regaining control over the appointment of high court and Supreme Court judges, something which it lost to the judiciary in 1993.

How seriously should we take such threats? We must remember that PIL has become an integral part of judicial activity in India, with its own checks and balances to prevent its abuse. The law ministry is also aware that any attempt to curb the use of PIL would be met with stiff opposition from the judiciary and the public. It is too well-entrenched; and such an attempt would not stand the test of constitutional scrutiny.

Hutokshi Rustomfram

log of cases, the minister of state for law, Mr Ramakant D Khalap, said, "PIL was being resorted by some people in an indiscriminate manner."

The minister's concern for the well-being of the judiciary was commendable. However, the judiciary has ably demonstrated that it is more than capable of looking after itself. The apex court itself has curbed the misuse of PIL, imposing exemplary costs and in some cases making the so-called public petitioner pay a fine for abusing the sacred process of law.

Justice should be free:

Chief Justice Ahmadi criticised the move saying that PIL was an important lever available to citizens, and access to justice must not be denied by imposing an economic constraint. Chief Justice designate Jagdish Sharan Verma made it known that the apex court was under a constitutional obligation to intervene whenever a citizen invoked Article 32 to have his grievances against the state's inaction or excesses redressed.

PIL became an imperative primarily because of executive inaction and legislative apathy towards people's suffering. Since the apex court treated a postcard as a writ petition in the public interest (regarding the police blinding of suspected thieves in Bhagalpur), PIL has become a wonder drug for the aggrieved common man, however unpalatable it may be for the establishment.

In medical activism, PIL has covered poor water supply and sanitation, ill-maintained blood banks, apathy towards road accident victims, and so on.

It was PIL filed by Dr Vincent Panikulangara in the Supreme Court in 1983 which got high-dose oestrogen-progesterone (EP) drugs banned in India. In 1993 a number of voluntary health organisations jointly filed PIL in the Supreme Court to screen and weed out irrational and hazardous drugs in our country.

In 1990-91, PIL forced the state governments to set up consumer courts in their states; another forced the government to revive those shut down through government indifference.

PIL can be used for medical activism in areas like checking human rights violations on AIDS patients. It is known that patients admitted in private hospitals are discharged without treatment if found to be HIV-positive. In Manipur, HIV-positive people have been chained and kept in isolated camps. At least two instances are on record where medical personnel at the All India Institute of Medical Sciences refused to treat HIV-positive patients. Mr Dominic D'souza was asked to leave his job at the World Wildlife Fund because he was found to be HIV-positive. These are. just some examples where PIE could help.

The intended AIDS Prevention Bill clearly violated Article 21 and would have been subject to PIL.

PIL can be used to ensure that the illiterate and ignorant are not denied the fruits of medical advancement. In government hospitals, limiting costly investigations to the powerful, rationing essential drugs, doing unethical research — can be fought by medical activists through the courts.

Activism may not be the ideal solution to our problems, but it nevertheless needed to highlight the state of affairs in the affairs of the state. The Bill's precondition of a hefty deposit would certainly prevent social organisations and activists from seeking justice.

The best option:

Seeking justice cannot be the monopoly of the rich and affluent. On the contrary it is the poor, the weak and unorganised who need justice most. Instead of such repressive bills, the government should address the problem that generates activism: a severe lack of transparency. So long as the executive and bureaucracy rarely take the people into confidence in decision making, their decisions will remain suspect, and activism will remain the citizen's best option to be heard.

PIL AND HEALTH: some cases

- *Rakesh Chandra Naruyan v/s State of Bihar [(1986) Supp SCC 576] was instituted on the strength of newspaper reports on the abject conditions in the Ranchi Mental Hospital. Directions were issued to provide various amenities, and for mandatory visits by the chief judicial magistrate.*
- *Supreme Court Legal Aid Committee v/s State of MP [(1994) 5 SCC 27] highlighted the inhuman treatment meted out to inmates, kept chained and naked. The asylum was ordered to implement the recommendations issued in Rakesh Chandra Narayan's case.*
- *In Sheela Barse v/s Union of India [(I 993) 4SCC 204] the practice of incarcerating non-criminally mentally ill persons was ruled illegal and unconstitutional, and action was ordered.*
- *In 1996, the Supreme Court decided on a* ***PIL*** *filed by the consumer group Common Cause against the Union of India and other petitioners highlighting serious deficiencies in the collection, storage, and supply of blood through blood centres. The court ordered the Union government to set up a plan for the implementation of a 1994 expert committee's suggestions. This included the setting up of national and state /union territory councils to licence blood banks, eliminate professional donors within two years, strengthen the relevant enforcement machinery and periodically check with drug inspectors. The commissions were also to propose separate legislation to regulate the collection, processing, storage, distribution and transportation of blood, and the operation of blood banks.*