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University of Turku

# CITIZEN RESISTANCE THROUGH PUBLIC INTEREST LITIGATION IN CONTEMPORARY CHINA

Junxin Jiang



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Citizen Resistance  
Through Public Interest Litigation  
In Contemporary China

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Junxin Jiang

## **University of Turku**

Faculty of Social Sciences

Department of Philosophy, Contemporary History, and Political Science

Centre for East Asian Studies

---

### **Supervisor**

Professor Lauri Paltemaa

Centre for East Asian Studies

University of Turku,

Turku, Finland

---

### **Reviewers**

Professor Christian Göbel

Department of East Asian Studies

University of Vienna

Vienna, Austria

Professor Johan Lagerkvist

Department of Asian, Middle Eastern and Turkish Studies

Stockholm University

Stockholm, Sweden

---

### **Opponent**

Professor Christian Göbel

Department of East Asian Studies

University of Vienna

Vienna, Austria

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In the summer of 2009, I went to Beijing, China to do fieldwork for my PhD research. At that time, my research interests focused on the role and current situation of civil society organizations (CSOs) over the period of socio-economic transition. I visited a number of well-known CSOs, including the Open Constitution Initiative, the Centre for Women's Law Studies and Legal Services of Peking University Law School, and Beijing Dongfang Public Interest and Legal Aid Law Firm. During the interviews, I had noticed a phenomenon that drew my attention: all those interviewees coincidentally mentioned that they were engaging in public interest litigation (PIL). Accordingly, some questions came into my mind: what is PIL? Why are they interested in this type of litigation? How to comprehend this phenomenon in wide socio-political context? I was instinctively aware that this topic might warrant further investigation. After consulting my supervisor, I decided to focus on this subject, which has started my long research journey in this field since then.

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## **Abstract**

Over the past three decades, the rapid economic development at the expense of environment, social justice and civil rights has led to increasing popular contention in contemporary China. Public Interest Litigation (PIL) that emerged in the mid-1990s is part of this picture in which Chinese citizens are making use of the law and judicial process to resist rights violations caused mostly by the government and vested interests, as well as to make their voices heard. Thus, it has become a noteworthy social and legal phenomenon.

The research employs the concept of rightful resistance developed by the political scientist Kevin O'Brien to explore the connection between this type of legal action and citizen resistance by placing PIL in the interaction between the state and civil society. It argues that PIL, as an idea and a litigation instrument based on rights protection and social justice, is a form of citizen resistance against the state from civil society in a post-totalitarian setting.

The study examines a wide range of social, legal and political factors contributing to PIL, which include the growing public demand for social justice, a relatively workable legal framework, the increasingly raised legal and rights consciousness among the Chinese populace, and the compromise between preserving social stability by the authorities and striving for legitimate rights by civil society. It finds that PIL has attracted widespread citizen involvement with urbanites at the forefront, which is a clear indication that Chinese citizens have become more conscious of their rights laid down in laws and are courageous to stand up for them. The research discusses some non-confrontational strategies adopted by PIL practitioners, arguing that it is this moderate nature and flexibility that PIL proponents have created more social spaces for rights claim. It also provides an analysis of how concerned parties in PIL including plaintiffs, defendants, judges and the media interact to define their spaces and sometimes seek a compromise. The study emphasizes that PIL has made considerable achievements in terms of increasing public awareness of constitutional rights, contributing to reshaping the state-society relations, encouraging legal struggle to advance rights, and serving to strengthen a fledgling civil society in China.

This is an interdisciplinary research based on case studies and interviews by adopting both quantitative and qualitative approaches. The study contributes to literature in the field of PIL mainly in two aspects. First, it illuminates a grey zone between citizen obedience and citizen resistance by explicitly arguing that PIL is a form of citizen resistance in the restrictive political and legal environment that has not been fully discussed in academia so far. This will be helpful to comprehend the underlying causes of this citizen legal action. Second, it examines the dynamic interaction between concerned social actors in PIL, which is conducive to enhancing the understanding of the state-society relations from a specific perspective in present-day China.

**Key words:** Public Interest Litigation, Citizen Resistance, Rights Protection, Social Justice, Public Participation, China

## Tiivistelmä

Viimeisten kolmen vuosikymmenen aikana nopea taloudellinen kehitys ympäristön, sosiaalisen oikeudenmukaisuuden ja kansalaisoikeuksien kustannuksella on lisännyt kansalaisten tyytymättömyyttä Kiinassa. Osa tätä kehitystä ovat olleet 1990-luvun puolivälistä alkaen yleisen edun nimissä käydyt oikeusmenettelyt (Public Interest Litigation, PIL), joiden kautta kansalaiset Kiinassa pyrkivät puolustamaan oikeuksiaan hallituksen ja omaa etuaan ajavien tahojen loukkauksilta sekä saamaan äänensä kuuluviin. Tästä on kehittynyt merkittävä yhteiskunnallinen ja oikeudellinen ilmiö.

Tässä tutkimuksessa näiden oikeusmenettelyjen ja kansalaisvastarinnan välistä yhteyttä tutkitaan laillisen vastarinnan käsitteen kautta tarkastelemalla PIL-menettelyjä osana valtion ja kansalaisyhteiskunnan vuorovaikutusta. Tutkimuksessa esitetään, että PIL-menettely käsitteenä ja oikeuksien puolustamiseen sekä sosiaaliseen oikeudenmukaisuuteen pohjaavana oikeudellisena välineenä on kansalaisyhteiskunnan valtiota vastaan kohdistama kansalaisvastarinnan muoto jälkitotalitaarisessa yhteiskunnassa.

Tutkimuksessa tarkastellaan monenlaisia PIL-menettelyyn vaikuttavia sosiaalisia, oikeudellisia ja poliittisia tekijöitä, joihin lukeutuvat kasvavat vaatimukset sosiaalisesta oikeudenmukaisuudesta, suhteellisen toimiva oikeudellinen kehys, kasvava tietoisuus oikeudellisista ja oikeuksiin liittyvistä seikoista sekä kompromissit, jotka syntyvät viranomaisten halusta säilyttää yhteiskunnan vakaus kansalaisyhteiskunnan puolustaessa oikeuksiaan. Tutkimus osoittaa, että kansalaiset ovat hyödyntäneet PIL-menettelyä laajasti, ja etenkin kaupunkilaiset ovat olleet tässä aktiivisia. Tämä on selvä osoitus siitä, että kiinalaiset ovat aiempaa paremmin tietoisia laillisista oikeuksistaan ja ovat nousseet puolustamaan niitä. Tutkimuksessa käsitellään myös joitain PIL-menettelyyn ryhtyvien kansalaisten käyttämiä maltillisia strategioita ja joustavuutta oikeusmenettelyssä ja todetaan, että nämä saattavat olla syynä siihen, miksi valtio tällä hetkellä sallii PIL-menettelyt. Tutkimuksessa korostetaan, että PIL-menettelyt ovat auttaneet merkittävästi lisäämään yleistä tietoutta perustuslaillisista oikeuksista, muokanneet valtion ja yhteiskunnan välisiä suhteita, rohkaisseet oikeuksien puolustamista oikeusteitse ja vahvistaneet orastavaa kansalaisyhteiskuntaa.

Tämä on tapaustutkimuksiin ja haastatteluihin perustuva monitieteinen tutkimus, jossa käytetään sekä määrällisiä että laadullisia menetelmiä. Se laajentaa olemassa olevaa

tutkimusta pääosin kahdella tavalla: ensinnäkin tutkimuksessa esitetään yksiselitteisesti, että PIL-menettely on eräänlainen kansalaisvastarinnan muoto, jota akateemisessa tutkimuksessa ei ole seikkaperäisesti tarkasteltu, ja toiseksi tutkimus lisää ymmärrystä valtion ja yhteiskunnan suhteista nykypäivän Kiinassa.

**Asiasanat:** yleisen edun nimissä käydyt oikeusmenettelyt, kansalaisvastarinta, oikeuksien suojeleminen, sosiaalinen oikeudenmukaisuus, Kiina

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## Abbreviations

ACEF	All-China Environment Federation
APEC	Asia-Pacific Economic Cooperation
ALL	Administrative Litigation Law
NCAA	National Certification and Accreditation Administration
CCP	Chinese Communist Party
CPL	Civil Procedure Law
CPPCC	National Committee of the Chinese People's Political Consultative Conference
CSO	civil society organization
EPB	Environmental Protection Bureau
EPL	Environmental Protection Law
GDP	Gross Domestic Product
HBV	Hepatitis B Virus
LPCRI	Law on the Protection of Consumer Rights and Interests
MOH	Ministry of Health
MOR	Ministry of Railways
NCOH	National Committee for Oral Health
NPC	National People's Congress
OGI	open government information
PBOC	People's Bank of China
PIL	Public Interest Litigation
PRC	People's Republic of China
SBLV	State Bureau for Letters and Visits
SC	State Council
SO	social organization
SPAWS	Shaanxi Provincial Administration of Work Safety
SPC	Supreme People's Court
SPDF	Shaanxi Provincial Department of Finance
UN	United Nations

## INTRODUCTION

Every individual placed in a position in which he is compelled to defend his legal rights, takes part in this work of the nation, and contributes his mite towards the realization of the idea of law on earth.

— Rudolf von Jhering (1915, 2)

Over the past twenty years since the mid-1990s, a series of lawsuits known as public interest litigation (PIL) that differ from conventional litigation aiming merely at vindicating individual interests have made their presence in China. Based on infringed individual interests in a Chinese legal context, this type of litigation goes far beyond individual interests. From the days it emerged, PIL has been mostly targeting irresponsible or unresponsive government agencies and arrogant state-owned monopolies, pursuing social justice, and claiming rights enshrined in law so that it occupies the moral high ground and becomes the vehicle of ordinary citizens to resist rights violations caused mostly by the government and vested interests. Consequently, it has attracted broader public attention and public involvement in which people from all walks of life including lawyers, law scholars, university students, consumers, peasants, journalists and civil society organizations (CSOs) have energetically engaged in this legal action. Therefore, PIL has become not only “a surging legal movement” (Huang 2006, 131), but also a significant citizen action for rights protection in a post-totalitarian context.

As a noteworthy social and legal phenomenon, PIL is bound up with a wide range of social, political and legal elements against the backdrop of socio-economic transition in China. No matter from which perspective we look at contemporary China, the past three decades have presented a complicated picture of it. It has become the world’s second largest economy in terms of Gross Domestic Product (World Bank 2014), but also ranked one of the most inequitable countries in the world (Sicular 2013). It fanatically



pursues economic growth at the expense of the environment, social justice and citizen rights. It sticks to one-party rule, but has loosened its tight grip over economy by allowing people to start their own business. It has enacted numerous new laws and administrative regulations that cover almost all economic and social domains, but still fallen short of the authentic rule of law (Li 2013; Liu 2015). This conflicting reality has led to increasing popular contention in which people utilize various means including demonstrations, sit-ins, collective walks, strikes, petitioning, litigation, and open letters to fight against rights violators. PIL is just a part of this whole picture. In this regard, it can be called a form of “rightful resistance” (O’Brien 1996) against the state from civil society under the post-totalitarian regime. This research will explore and discuss a series of relevant questions as follows:

- What factors have shaped and driven PIL?
- How have ordinary citizens made use of PIL to advance their rights?
- What does the limited legal and political space imply for PIL?
- Why is PIL tolerated by the authorities that generally reject criticism and accusation from civil society?
- How does PIL affect the state-society relations?
- How to assess the impact of PIL?

Addressing these questions will answer the theme of this research: why PIL should be regarded as a form of citizen resistance in China today. Before going into further discussion, however, let us to introduce and explain two key concepts that this research relies on, i.e., PIL and rightful resistance.

### **Key Concept: What is PIL**

According to some scholars (Zhou & Hu 1983, 352; Zhou 1996, 886-887), PIL can be traced back to Roman times, when Roman citizens were allowed to sue for the public interest. In modern sense, nonetheless, it is commonly held that it originated from the 1950s and 1960s during the American Civil Rights Movement in which a few lawyers stood out to provide legal aid to vulnerable groups such as African Americans and women, and to seek to change some existing legislation deemed unreasonable by making use of legal instruments and constitutional principles (Chayes 1976). A typical liti-

gation was the *Brown v. Board of Education of Topeka* in 1954 in which the U.S. Supreme Court made a judgment declaring that racial segregation in public schools violated the U.S. Constitution (Hockett 2013). This historical ruling played a great part in fostering the Civil Rights Movement as well as encouraging more civil rights activists to use legal tools for social reform. This new litigation model was later called public law litigation or public interest litigation.

Abram Chayes, Law Professor at Harvard University, is considered the first scholar to coin the phrase “public law litigation” in 1976 (Hershkoff 2001, 1). In examining conventional litigation and this new emergent litigation, Chayes (1976, 1283-1284) argues: “Whatever its historical validity, the traditional model is clearly invalid as a description of much current civil litigation in the federal district courts”. He (*ibid*, 1284) thus suggests using public law litigation to stand for this type of litigation:

The shift in the legal basis of the lawsuit explains many, but not all, facets of what is going on “in fact” in federal trial courts. For this reason, although the label is not wholly satisfactory, I shall call the emerging model “public law litigation” [quotation marks in original].

According to Chayes’ research, there are eight features about PIL that differ from those of conventional litigation, which include: the scope of the lawsuit is not limited by a specific historical event, but is shaped by the courts and parties; the party structure is not limited to individual adversaries, but involves more parties; relief is not limited to compensating for a past wrong but impacts on many persons beyond the lawsuit; the relief is often negotiated by the parties; the judgment does not end the court’s involvement but requires a continuing administrative judicial role; and a lawsuit often involves grievance about public policy (Chayes 1975-1976, 128). It is these distinctive features that PIL is often employed to address a number of controversial social issues that can hardly be achieved through conventional litigation.

Since then, this new type of litigation has drawn more attention from students in this field who have explored, defined and interpreted PIL through a variety of perspectives, including economic, social and political ones. For instance, Rajeev Dhavan pays atten-

tion to PIL on its addressing social and economic inequalities to realize equal opportunities and social justice. In his opinion (1986, 21), PIL is

[...] part of the struggle by, and on behalf of, the disadvantaged to use “law” to solve social and economic problems arising out of a differential and unequal distribution of opportunities and entitlements in society. In an effort to procure “justice between generations”, it is also concerned with preventing the present and future needless exploitation of human, natural and technological resources [quotation marks in original].

James A. Goldston (2006, 496) regards PIL as means of legal advocacy for rights, suggesting that PIL “refers to law-based advocacy intended to secure court rulings to clarify, expand, or enforce rights for persons beyond the individuals named in the case at hand”. Helen Hershkoff and Aubrey McCutcheon (2000, 283) who see the potential of PIL to foster policy change characterize PIL as

[...] seeking to use the courts to help produce systemic policy change in society on behalf of individuals who are members of groups that are underrepresented or disadvantaged — women, the poor, and ethnic and religious minorities.

This point of view was echoed by Fu Hualing and Richard Cullen, law scholars from the University of Hong Kong, who considered PIL in China as a strategy employed by lawyers aiming at not only protecting public interest, but also promoting policy change. They (2009, 1) have argued:

The defining characteristic of PIL in China is the use of litigation by lawyers and other rights advocates as a strategy to protect a general interest that is larger than that of the individual case interest. There is an ulterior motive behind such cases on the part of the lawyers who aim at policy changes through the legal process. Cases that are litigated thus reflect a general social concern which affects the interests of a wider group of people.

Focusing on its correlation with human rights protection and public participation, Lin Lihong (2008, 5), Law Professor from Wuhan University Law School, emphasizes its social influence in China, defining PIL as

[...] a kind of litigation with social influence aimed at vindicating public interest based on the idea of public interest, human rights protection, social reform and public participation. It focuses on some issues that have been ignored by mainstream against the backdrop of social transition.

Examining these definitions invoked above, there are three common features in them in spite of some differences of detail. First, PIL aims to vindicate public interest beyond individual interests, which distinguishes it from conventional litigation that pays attention to personal rights. Secondly, PIL focuses more on social justice and social equality on behalf of vulnerable groups' interests. And finally, PIL is often employed to precipitate policy, legislation and social change. Given these understandings, PIL in this dissertation refers to *the litigation filed by individuals or organizations aimed at vindicating civil rights, advocating for policy change and making voices heard based on the idea of social justice and rights protection.*

### **The Role of PIL**

While mentioning PIL, it usually brings to mind an image of the filing of a lawsuit by an individual or organization for the public interest. There is nothing wrong with this first impression, but it raises a question of what is public interest? Maybe most people know something about it, even if they cannot exactly define and explain this term (Huang 2008; Sun 2010). In fact, public interest is a vague term that does not have a commonly acknowledged definition.

According to the *Random House Dictionary*, public interest refers to “(1) the welfare or well-being of the general public; commonwealth; (2) appeal or relevance to the general populace”. In other words, it does not denote the interests of any individual or community. It is further noted that public interest is often viewed as being equivalent to state interest or government interest, but there are some differences among them, although they often overlap. In the view of Lin (2008, 6), state interest refers to the interest of a

country as a whole, which is an external concept vis-à-vis foreign countries or international organizations. Of course, the state interest actually goes beyond what Lin suggests, which also includes a country's political, legal and cultural system. As for government interest, it is not necessarily consistent with public interest or state interest, in spite of the fact that the government is supposed to represent public interest and state interest in principle. Nonetheless, once a government is formed, it has its own interests such as consideration of the term of the government and election strategy. Hence, the state interest or government interest sometimes conflicts with public interest. Recognizing the similarities and differences between these three interests is important for us in examining the role of PIL in pursuing social justice and promoting the rule of law. It can also explain why PIL is used by citizens to counterbalance the government and vested interests in China.

What is the role of PIL in modern society? Why is the idea of PIL widely accepted in both developing countries and developed countries at least at certain periods of time? These questions refer to its social functions and objectives that concern social justice, human rights protection and social reform. Nan Aron (1989, 3-7), the founder of Legal Justice American, summarizes the role of PIL as four aspects: enforce law, apply and explain law, reform public institutions, and spur social and political reform. Hershkoff and McCutcheon (2000, 283) also hold a similar view by pointing out that PIL

[...] can help to reform existing laws that hinder or prevent members of these groups [vulnerable groups] from participating fully and fairly in society. It can enforce rights that existing laws guarantee, but are not followed in practice. Litigation can complement a broader political movement, or foster mobilization and encourage alliances that then produce political action. Furthermore, litigation can help change attitudes toward the law and create a culture in which government and private entities respect and enforce human rights values.

It is these social functions embedded in PIL which can be used to mobilize public participation to advance social and political goals that PIL has gradually become a global phenomenon along with the American Civil Rights Movement, the consumer rights

movement and the environmental protection movement since the mid-20th century. More and more lawyers, law students and other social actors in South Africa, India, Bangladesh, the Philippines, Japan and other countries have devoted their time, energy and resources to social justice and the public cause by making use of PIL to solicit public and government attention over some controversial social issues as well as to promote policy and social change on behalf of underrepresented groups (Yan 2002; Xu 2009). In this sense, PIL is also called impact litigation (Wu 2008), test case litigation, or strategic litigation (Vanhala 2011).

With regard to the classification of PIL, some scholars (Wu 2006, 19) categorized it as civil PIL, administrative PIL, consumer PIL, economic PIL, intellectual property PIL and environmental PIL. This categorization is based on the understanding of PIL in its application to corresponding substantive laws. Nonetheless, different types of PIL cases often overlap so that they can hardly be conclusively categorized. For instance, a civil PIL case and an economic PIL case may involve the same issue relevant to consumer rights. In the same way, an environmental PIL case may also pertain to administrative nonfeasance that leads to damage to privately-owned or state-owned assets and environmental pollution, and vice versa. Given this consideration, all those cases with a public interest nature, no matter what types they are classified, are labelled as PIL in this research.

### **Previous Research on PIL in China**

From the outset, PIL has caught academic attention and interest. According to incomplete statistics, there had been around 13 monographs and 3,894 journal articles addressing PIL in China up to the end of 2014, if searching China Academic Journals Full-Text Database (CNKI) by using the key Chinese characters 公益诉讼 (public interest litigation). These scholarly writings covered a wide range of issues relevant to PIL as discussed below.

Some studies such as *The New Type of Litigation: Theory and Practice of Economic Public Interest Litigation* (Han & Ruan 1999), *Studies on the Legal System of Public Interest Litigation* (Yan 2008) and *Public interest litigation in China: concept, ideas and prospect* (Li & Liu 2012) paid attention to a number of theoretical issues around PIL, including its definitions, concepts, origins and features. They basically considered

that PIL is a new type of litigation which can be utilized to protect disadvantaged groups' interests and promote the rule of law in China, although this concept comes from abroad. This argument covers a part of PIL, but, as this dissertation will be arguing, the scope and connotation of PIL go far beyond it.

Others such as *On the Road to Social Justice: the Theoretical Study of Public Interest Litigation* (Xu 2009) and *The dilemma of public interest litigation in China* (Guo 2011) examined the necessity and feasibility of PIL as well as its procedural obstacles and limits in China. They agreed that PIL as a litigation instrument can play a role in dealing with some social issues through the judicial system, but it also faces a few obstacles and difficulties, which specifically comes from its legal status that has not been clearly stipulated. It is argued here that the difficulties with PIL do not stem primarily from its vague legal status, but the larger role in empowering and generating civil society, which is sensitive in current China.

Still, others like *A surging legal movement: observations and comments on the practice of public interest law in contemporary China* (Huang 2006), *Public Interest Litigation and Social Justice* (Li 2010), and *Challenging authoritarianism through law: potentials and limit* (Fu 2011) were focused on PIL in its social functions, implications and influences. They regarded PIL as a legal movement for social justice, rights protection and rule of law, which can exert pressure on irresponsible government departments through law and judicial system. While this is also affirmed in this study, existing literature here did not discuss the role of PIL enough in the changes it can bring about in the wider socio-political context of the post-totalitarian regime in China.

Finally, some writings such as *Promotion of social change by way of public interest litigation: investigation of public interest litigation system in India* (Jiang 2006), *Harmonious Society and Public Interest Law: a Comparative Studies on Public Interest Law between China and the U.S.* (Tong & Bai 2005), and *Investigation Report on Public Interest Litigation in Six Asian Countries* (Lin 2010) aimed at introducing the theory and practice of PIL in countries other than China. The scholars of these publications are especially interested in PIL-related information and experiences in India and the U.S. As regards India, they paid attention to some similarities between India and China in terms of population, the level of development, and social problems they are facing as two large developing countries. Thus, Chinese lawyers and law scholars can learn some

experiences and lessons from their Indian counterparts. As for the U.S., it is considered the birthplace of PIL, which can provide Chinese law professionals and PIL practitioners more theoretical knowledge and important experiences around PIL.

All these academic writings addressed PIL from a variety of angles and perspectives such as what PIL is, what role PIL plays, why PIL has been so popular in recent years, and what obstacles and limits PIL faces, which have enriched the understanding of this phenomenon. With reference to its social functions and implications on which this dissertation focuses, these studies mainly dealt with PIL from four aspects: promotion of the rule of law, care for vulnerable groups' rights, protection of human rights, and advocacy for political activism.

First of all, an important part of existing literature has focused on PIL in its promotion of the rule of law in China. Some law scholars and lawyers believe that PIL can provide them with a relatively potent means to cope with some social problems on a legal level. Huang Jinrong, an associate researcher and a PIL activist at the Law Institute of Chinese Academy of Social Sciences, argues that PIL aims at exposing some illegal acts or unreasonable legislation through which to urge the government to conscientiously fulfil its duty. In his words (2006, 146), public interest law practice

[...] adopts strict legal instrument instead of widespread political mobilization; it puts forward some concrete legal demands instead of abstract political resorts; it tries to improve the legal system and promote social progress under the premise of acknowledging the current political and legal order.

Xu Hui, a researcher at the Law Institute of the Chinese Academy of Social Sciences has also held this view, considering PIL as an important legal instrument to foster the rule of law in China as she (2009, 72-73) has argued:

Individual citizen uses the law as an instrument or starting point toward public interest, which is conducive to not only social stability in the process of maintaining public interest, but also the construction of the rule of law.



According to their arguments, PIL is a legal instrument used by citizens to address some concrete social problems for the public interest and social progress. It is true. PIL is not related to political mobilization but legal mobilization, it is not related to street movement but legal movement, which provides aggrieved citizens with an alternative channel for their rights protection, yet it may have more and wider social and political effects discussed in this dissertation.

Secondly, a considerable part of studies has regarded PIL as one of the ways to provide the powerless with legal protection and also social justice under the notion of “harmonious society” (*hexie shehui* 和谐社会). This idea was put forward by Hu Jintao (胡锦涛), the former General Secretary of Chinese Communist Party (CCP), who tried to balance economic and social development as well as mitigate social tension and conflict after taking office. At the Third Plenary Session of the 16th National Congress of the CCP in 2003, he initiated the building of a “harmonious society” by advocating a “scientific outlook on development” (*kexue fazhanguan* 科学发展观) and “putting people first” (*yiren weiben* 以人为本) in China. By taking advantage of this opportunity, a few lawyers and law scholars called for paying more attention to the interests of disadvantaged groups in the course of rapid economic development and urbanization.<sup>1</sup> For example, Tong and Bai (2005, 16-21) have asserted:

Public interest is in essence the interests of disadvantaged groups. Therefore, protection of public interest mainly refers to the protection of disadvantaged groups’ interests.

Another legal scholar Li Xianggang (2011, 144) also argues that “The extent to which vulnerable groups and individuals are protected has always been a significant yardstick to measure political civilization and rule of law”. Based on this argument, he (*ibid*) continues to point out:

We must establish a set of effective mechanism to peacefully dissolve a variety of social contradictions and realize social

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<sup>1</sup> Disadvantaged groups in China usually refer to migrant workers, peasants, laid-off workers, disabled people and HBV carriers, etc.

harmony. The administrative public interest litigation system is one of those resolving mechanisms because it is conducive to safeguarding public interest and the legitimate rights of disadvantaged groups.

Li Ling, another law scholar, emphasizes the importance of curbing public power by means of PIL. In her opinion, the government or public power is the major threat to the public interest in China. Thus, she concludes that PIL can play a part in vindicating vulnerable groups and maintaining social justice. She (2009, 152) has argued:

Private entity files a lawsuit against the wrongdoing and misconduct by the state to protect public interest, which constitutes reasonable restriction on public power.

All their arguments have indicated a fact that PIL is the “the weapons of the weak” (Scott 1985). As a matter of fact, vulnerable people in any society, not just in China, usually have less option in the face of social injustice and inequality. Thus, PIL has become one of their important weapons to legally confront the powerful, which can also be seen in the U.S., India, Bangladesh and Japan where disadvantaged groups and their representatives have utilized PIL to struggle for their rights and protest against unfair social phenomena (see Tong & Bai 2005; Jiang 2006; Lin 2010).

Thirdly, a few studies have contributed to PIL in its relation to human rights protection. Given that human rights protection is currently weak in China, some scholars considered PIL as a legal instrument that can be used to advance human rights protection. Li Gang (2005, 28), a law scholar and a PIL practitioner, believes that advocating for public interest is tantamount to advocating for human rights:

Human rights refer to both individual interests and public interest ... If individual interests are universally violated, they are, of course, relevant to public interest.

Xiao Taifu (2007, 97), another scholar, suggests that PIL is an alternative to advancing human rights written down in the Constitution in a society where the rule of law has not been in place yet:

As it is impossible to file a constitutional litigation and human rights litigation in the current political and legal environment, it is a relatively good choice to use PIL to raise citizens' legal awareness, promote the rule of law, and realize human rights protection.

It should be admitted that to connect PIL with human rights protection is a bold point of view for mainland Chinese scholars due to the fact that human rights is still a sensitive topic not encouraged by the authorities for the time being. Nonetheless, this is an important subject that cannot be evaded because a number of social problems and contradictions in China such as discriminatory policies in employment and education, abuse of office, land seizure, forced demolitions and evictions are indeed related to human rights. In this sense, the advocacy of PIL is of course conducive to promoting human rights protection.

Last but not least, a few scholars, specifically overseas ones, have addressed PIL from the perspective of political activism in China. It is an obvious fact for them that in a country where public opinion and public participation are constrained, people have to seek alternative ways to express their opinions (Lu 2008). Lu Yiyi, a research fellow at the University of Nottingham, regards PIL as a sort of political activism. In her view (*ibid*, 27), some people may practice PIL with the intention of bringing about policy change and even political change:

[...] many PIL lawsuits clearly have political implication ... through the legalization of political issues, some people have found a new channel for promoting political change. In this sense, for some people at least, PIL constitutes a new form of political activism.

Fu Hualing, Law Professor at the University of Hong Kong, is one of few scholars who mentioned the correlation between public interest litigation and rightful resistance in China by equating how people use the law for their rights with challenging the government. Fu (2011, 347) has argued:

In addition, social groups' appreciation of the opportunity, willingness and ability to exploit the gap between law and practice is another important condition for rightful resistance.

It is beyond doubt that their standpoint about the linkage between PIL and political activism or rightful resistance in China is meaningful in fact that under the restrictive political situation, any citizen action has sort of political implications or can be interpreted as having them. This is also the main argument of this research.

In sum, there is a vast body of literature on PIL and its relations to the rule of law, disadvantaged groups' interests and social justice, but these writings published in China have generally ignored its political implication. Conversely, overseas Chinese scholars like the last two mentioned above have discussed PIL and political activism without much political scruples, but there are not many of them. As for Western scholars focusing on China who have discussed litigation such as Eva Pils (2006, 2015) and Jonathan Benney (2013), they have noticed the connection between rights defence and resistance in China, but usually paid attention to the rights defence movement and rights defence lawyers instead of PIL. In other words, the subject of how PIL connects to citizen resistance in China, an important aspect of citizen legal action under a repressive regime, has not been fully addressed in academia to date. Therefore, this dissertation specifically focuses on *citizen resistance in the form of PIL* in contemporary China.

### **Theoretical Approach: PIL in the Perspective of Rightful Resistance**

The concept of rightful resistance was initially coined by an American political scientist Kevin J. O'Brien in 1996, when he explored citizen protests in rural China and somewhere else like the U.S. and South Africa in which he found aggrieved citizens made use of laws, policies and official values recognized by the state to resist political and economic elites who had failed to fulfil their commitments as well as to advance their rights and interests. O'Brien (1996, 33) calls this phenomenon "rightful resistance" and defines it as follows:

Rightful resistance is a form of popular contention that (1) operates near the boundary of an authorized channel, (2) employs the rhetoric and commitments of the powerful to curb political

or economic power, and (3) hinges on locating and exploiting divisions among the powerful.

This concept consists of two intertwined aspects: it is the “resistance” (*kangzheng* 抗争) to rights infringement caused by the powerful, whereas this resistance is “rightful” (*hefa* 合法) in terms of the law because resisters use laws, policies and official ideology to fight against rights violators. According to O’Brien, rightful resistance rests on the gap between claimed laws/policies/values and their failed implementation. It is this gap that provides resisters with rightful opportunities to confront the powerful. Therefore, this kind of resistance is deemed legally and morally justifiable by both the public and elites. It should be noted that the rightful resistance discourse is specifically important and meaningful for resisters under repressive regimes because it may shield them from political and professional risks while they are engaged in rights defence activities.

As a matter of fact, this type of rightful resistance can be examined in relation to everyday resistance of peasants described by Scott who (1985, xv) points out that “... most subordinate classes throughout most of history have rarely been afforded the luxury of open, organized, political activity. Or better stated, such activity was dangerous, if not suicidal”. To put it another way, using various forms of everyday resistance to strive for their legitimate rights and interests is always the rational choice for vulnerable people who otherwise might encounter some unanticipated risks.

In terms of forms of everyday resistance, according to Scott (*ibid*, xvi), they include “foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on”. These resistance forms are usually quiet and underhand to avoid attention. In a sense, these forms of everyday resistance are passive reactions and resistance from the powerless groups in society. By contrast, rightful resistance is about more active reactions and resistance to the powerful from the powerless because resisters in it consciously take advantage of all available and rightful means such as laws, policies and official values to openly and noisily resist social injustice and inequality. In such a way, they try to seek more public attention and support.

The concept of rightful resistance is of particular relevance to PIL in China because it is just a form of rightful resistance due to the following three reasons that conform to the

description about this resistance by O'Brien. First, PIL practitioners acknowledge the legitimacy of laws and official values, and require their adversaries, mostly government agencies and vested interests, to play by the same set of rules. Thus, this legal action virtually constitutes a challenge to the authority of the party-state. Second, PIL proponents persist in making use of the law to justify their rights claims and resist rights violators by exploiting the gap between laws offered on the books and their poor implementation in reality. By invoking an old Chinese saying, this legal action is like "Deal with a man as he deals with you" (*yi qirenzhidao haizhi qirenzhishen* 以其人之道还制其人之身), or beat someone at his or her own game. Third, PIL practitioners are vocal, noisy and public to make their voices heard, and solicit public and elite attention for their cause.

In addition, the term "PIL" looks like a neutral word that is more likely to be accepted by the authorities. As Kelly (2006, 184) has noted, some terms like democracy, freedom and rights defence in China "are still objects of suspicion", so other words related to these terms "come into play" in this setting. PIL can be seen as a term serving those seeking less risky channels to claim their rights and challenge the state because its political connotation is not as strong as, for example, rights defence literally and semantically. In this sense, some lawsuits in the name of PIL have more chances to be registered in the court and receive favourable rulings in contrast to other lawsuits under the name of rights defence, which will be further discussed later.

### **PIL in the Post-Totalitarian Setting**

In fact, employing PIL as a rightful instrument to resist the state is not happening in China alone. According to Goldston (2006), independent-minded citizens in the former communist countries of Central and Eastern Europe also took advantage of this institutional instrument to defend civil rights and challenge the authorities before the fall of Berlin Wall, because this was one of few available means that could be used for rightful resistance for them under the totalitarian regimes. For this reason, Goldston (2006, 493) has noted:

PIL is often a tool of the iconoclast, the victim of human rights abuse, or the minority viewpoint that feels ignored or

overridden by majoritarian political decisions — PIL was often seized upon by those who had dared to express opposition to rights violations under communism.

It is no surprise that under the repressive regimes such as the former Central and Eastern Europe communist countries, those who had few channels for their rights claims and voices had to seek alternative ways like PIL acknowledged by the authorities to push back against rights violations. This resistance strategy also applies to resisters or aggrieved citizens in current China, which, in many aspects, meets the definition of a post-totalitarian state at the moment. Therefore, this study also employs the concept of post-totalitarianism to conceptualize the role of PIL in the state-society relations in China. To address this issue, we firstly need to examine the nature of the Mao-era between 1949 and 1976, which refers to the understanding of totalitarianism. *The Encyclopaedia of Political Sciences* (2010, 1673) defines it as:

*Totalitarianism* is an ideal that, in practice, applies to any regime that promotes total control of a people in pursuit of the ideological goals of the leadership. Totalitarian rulers seek control through the elimination or co-optation of independent business groups, labour unions, religious bodies, educational institutions and challengers to the regime, such legislators from competing political parties or an independent judiciary [emphasis added].

This definition clearly explicates what totalitarianism is and how totalitarian regimes reach their goals. First, totalitarianism is an ideology such as Nazism or Communism pursued by totalitarian rulers. Second, totalitarian regimes pursue their ideology and preserve their power through large-scale propaganda, brainwashing and coercive means. Nowadays it is generally admitted that Nazi Germany and Stalin's Soviet Union were totalitarian regimes (Arendt 1958). In fact, Mao's China should also be categorized as totalitarian regime. Along with more CCP archives being exposed, it is increasingly clear that there is no fundamental difference between Stalin's Soviet Union and Mao's regime in terms of social governance and political control, because both of them pur-

sued “the ideological goals”, i.e., socialism or communism and total control of people through large-scale propaganda and brutal repression.

In Mao’s regime, a string of large scale political campaigns that aimed to promotion of revolutionary ideology and purification of Chinese society went through all his era, which led to mass political repression, and human-made disasters and sufferings. For instance, the Anti-Rightest Campaign (*fanyou yundong* 反右运动) in 1957 purged 550,000 alleged rightists, most of whom intellectuals (Shen 2009, 662). The Great Leap Forward Campaign (*da yuejin* 大跃进) between 1958 and 1962 led to the great famine, which resulted in “at a minium of 45 million excess deaths” (Dikötter 2010, 333). During this period, “... coercion, terror, and systematic violence were the foundation of the Great Leap Forward” and it was “one of the most deadly mass killings of human history” (*ibid*, x-xi). The Great Proletarian Cultural Revolution (*wuchan jieji wenhua dageming* 无产阶级文化大革命) between 1966 and 1976 persecuted millions of people during which the beating, imprisonment, humiliation, torture and murder were pervasive (Bo 2009). During this period, even many senior Chinese leaders were unable to avoid miserable fate. Liu Shaoqi (刘少奇), the state chairman then, and Lin Biao (林彪), the CCP vice chairman and the assumed successor to Mao then, died unnaturally. Aiming to this harsh rule, Thompson (2001, 71) has commented: “[...] totalitarian regimes such as Stalin’s Soviet Union and Mao’s China have gone further than any other regime type in suppressing their opponents.” Based on these historical facts, it is appropriate to label Mao’s regime totalitarianism.

After Mao died, China adopted the reform and open-door policy, which has led to great achievements in its economy. Nonetheless, it in many aspects unfortunately falls under the category of a post-totalitarian regime. As for the definition of post-totalitarianism, Thompson (2002, 83-87) put it this way:

*Post-totalitarianism* is substantially “weaker” than totalitarianism ... Although repression of open dissent continues, small opposition groups arise ... But many of the old mechanisms of social control remain intact under post-totalitarianism, meaning that the leadership still enjoys the powers of the old totalitarian state apparatus, even if they ex-



ercise them more judiciously [emphasis added; quotation marks in original].

In Thompson's view, post-totalitarianism which originates from totalitarianism is weaker in terms of its capability of political control, even if it still keeps repressive mechanism of totalitarianism. This means that civil society, which was totally annihilated under totalitarian regimes, has limited room under post-totalitarian regimes. This point of view is echoed by other scholars like Tucker (2005, 22) who has noted:

[...] all post-totalitarian societies share persistent high levels of corruption, weak civil societies and rule of law, strong influence of the government on the mass media, and low levels of transitional justice — sanctions against totalitarian perpetrators and reparations for victims.

This description about the features of post-totalitarianism is exactly applicable to the reality in today's China. Although China has re-established its legal system that was totally destroyed during the Cultural Revolution, its political system in which the Party is above the law without any check is still the same as before. This situation unavoidably led to Tiananmen tragedy in 1989 in which the authorities used heavily armed forces to violently crack down the students-led democracy movement that even Mao had not done. This totalitarian legacy is also manifested in the following aspects: the party-state has detained and prosecuted dozens of rights defense lawyers and human rights activists in recent years; it continues to control mass media and heavily censor and cover up a series of historical events such as the "Anti-Rightest Campaign", "Great Famine", "Cultural Revolution" and "Tiananmen Democracy Movement"; it even prohibits university lecturers from talking about civil society and constitutional governance, etc.<sup>2</sup>

On the other hand, the Chinese regime is "weaker" in political control relative to totalitarian Mao-era due to economic reform and opening-up policy. It is well known that Chinese society once experienced a quiescent period in the wake of Tiananmen Democ-

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<sup>2</sup> According to a report, in 2013, the CCP issued the Document 9: Communique on the Current State in the Ideological Sphere on which it urged to guard against seven false ideological trends, including constitutionalism, civil society, universal values and historical nihilism (Document 9, 2013).

racy Movement in 1989. From 1992 onwards, however, there appeared to be at least three events that have impacted on Chinese society and politics. First, Deng Xiaoping's "Southern Tour" of Shenzhen and other Special Economic Zones in coastal regions in 1992 reopened market-oriented reform, which led to rapid economic growth and diversity in society. Secondly, the bid for holding the 2008 Beijing Summer Olympics and subsequent commitment to international society to improve human rights made the Party temporarily loosens its tight political hold over the society during that period. And last but not least, China's entry into the World Trade Organization at the turn of the 20<sup>th</sup> and 21<sup>st</sup> century further fostered economic, social, cultural and political exchanges between China and the world, which was conducive to fostering the development of political openness, rule of law and civil society (Tao & Wang 2002). All these events have accelerated economic reform and promoted social pluralism.

In short, the current Chinese communist regime has inherited its totalitarian legacy by continue suppressing political opposition, but also permitted "a rudimentary and feeble civil society" (Tucker 2005, 26) to exist. Nowadays, the party-state adopts the policies of both suppression and conciliation in social governance and political control. This situation corresponds to the portrayal of totalitarianism and post-totalitarianism by Thompson (2001, 72): "While totalitarianism attempted to abolish all plural elements in society, posttotalitarianism is characterized by limited political pluralism." Of course, during the periods of as long as 40 years and several generations of Chinese leadership after Mao, the concrete situation of Chinese society and governance policies of the Party have varied with the passage of time. However, the current Chinese regime as a whole can be regarded as a post-totalitarian regime.

It is in the post-totalitarian setting that citizen legal action like PIL has its room. At the same time, in the Chinese people's pursuit of social justice and the rule of law, they have also adjusted their strategy. If they in the late 1980s pursued political reform and democracy through political mobilization as exemplified by the Tiananmen Democracy Movement, in the post-Tiananmen era, they have largely paid attention to social justice and rights protection through legal mobilization. In other words, Chinese citizens are largely engaged in rightful resistance within the current political and legal framework at the moment. PIL is such a form of rightful resistance because this sort of legal action rightfully and legally challenges the authority of the Party which always claims to be

“great”, “glorious” and “correct”, but some of its policies and acts are actually unjustified or even lack of legal basis as will be discussed later.

### **A Window on Citizen Resistance**

As mentioned at the beginning of this research, China’s GDP-oriented economic development model based on ravaging natural resources, exploiting migrant workers and ignoring citizen rights has resulted in growing citizen resistance manifested in a range of forms. As Perry and Selden (2003, 1-22) have observed, there are multifaceted conflicts and myriad areas of resistance in China nowadays from tax riots, labour strikes and interethnic clashes to environmental, anticorruption protests, legal challenges, pro-democracy demonstration, religious rebellions, and even mass suicides. PIL is, so to speak, a specific type of citizen resistance.

As a significant social phenomenon, PIL is not only the interactive outcome of social, economic, legal and political elements, but also a reflection of public sentiment and social demands in an era of experiencing drastic changes. A question about PIL that firstly needs to be answered is why public-minded citizens and CSOs favour to make use of PIL as a legal instrument to claim their rights, make their voices heard, and advance their cause?

By and large, the most direct and effective way for grassroots people to voice their concerns and make their complaints is to resort to political mobilization such as demonstrations, assemblies and processions that may have immediate impact on public opinion and government attention. Nevertheless, these channels, even though acknowledged by the Constitution of the People’s Republic of China (Constitution) and the Law on Assemblies, Processions and Demonstrations (APD Law), are virtually highly constrained. The APD Law is even mocked as “the Law on Prohibition of Assemblies, Processions and Demonstrations” (Chen 2006). Under the circumstances, Chinese citizens have to take a roundabout way to make their complaints and resist rights violators by making use of other available means.

PIL is such an alternative channel that has been used by civil society for rights protection and public participation over the past 20 years. This dissertation employs the concept of rightful resistance to interpret this dynamic social and legal phenomenon by re-

garding PIL as a form of citizen resistance or a part of citizen resistance from civil society to strive for legitimate rights and make voices heard during the socio-economic transition in China.

There are several other relevant concepts and terminologies in this dissertation that need to be explained and clarified. One of them is civil society that refers to the state-society relations. According to Jürgen Habermas (1992, 453-54), civil society consists of a variety of voluntary associations “outside the realm of the state and economy”, which range from “churches, cultural associations, and academies to independent media, sport and leisure clubs, debating societies, groups of concerned citizens, and grassroots petitioning drives all the way to occupational associations, political parties, labour unions”. It is the aggregation of all these social forces outside the state that forms so-called civil society in the view of Habermas. In the same vein, Shambaugh (2016, 68) has also suggested:

Civil society is considered to be the totality of civic activities that take place in the community among individual citizens, groups, or organizations *fully autonomous from and not controlled by the state* [emphasis in original].

As for the role of civil society, Habermas (1996, 367) considered that it can bring into public sphere some societal problems that widely concern people and can promote problem-solving. John Keane (1988, 14) also regarded civil society as the expansion of social equality and liberty, and the restructuring and democratizing of state institutions. In other words, civil society is an indispensable component in a diverse society and counter-balance to the state. However, if this definition or description is appropriate when used in the context of democratic countries, it is obviously not the case in China.

Strictly speaking, nearly all “voluntary associations” defined by Habermas or civil society organizations (CSOs) outside the state under the one-party system in China do not exist, because the Party controls almost all social domains by way of both direct or indirect means. Take a labour union that is a significant venue for employees to bargain with employers for example. There are no independent labour unions in China except for official labour unions under the umbrella of the All-China Federation of Trade Un-

ions. Even Christian churches in China are called “Three Self” churches and are under the leadership of the atheist Party.<sup>3</sup> In this restrictive social and political environment, Teets (2014, 4) has noted that civil society in China

[...] needs less autonomy from the state to accomplish goals of advocacy and service delivery and in fact increasing channels of interaction with the state might help these groups have more impact on policy making.

Teets calls this model of new state-society relationships “consultative authoritarianism” because it is not “a dichotomous choice between total independence and total cooption” (*ibid*). She considers it beneficial to both the regime and civil society due to the fact that the former can enjoy governance benefits but still control certain activities of CSOs, while the latter has opportunity to influence policy-making. To be sure, there is no other choice for Chinese civil society to reach its goal in the current post-totalitarian setting discussed earlier except for admitting this reality and adopting mixed strategies of combining resistance and cooperation.

Thus, the term “civil society” used in this dissertation does not suggest that there exists such a society consisting of autonomous associations outside the state in present-day China. It just means that some new social forces or elements such as rights-conscious citizens, independent-minded intellectuals and CSOs are emerging in a politically controlled society that is different from the totalitarian Mao period during which there was no private sphere. These new social elements have spawned the emergence of PIL, which in turn is a part of civil society and has further fostered the development of civil society in China.

In addition, such terms as the Party, government, state, people and citizen also need to be clarified. As China is a one-party dominated country as ordained in the Constitution whose preamble repeatedly proclaims “the leadership of the Chinese Communist Party”, the term Party, party-state, state or government are basically synonyms that cannot be

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<sup>3</sup> The “Three Self” means self-governance, self-support and self-propagation, which implies excluding the influence of the Vatican.

separated, so these terms in this research are used interchangeably. With regard to the terms “people” and “citizen”, the former refers to human being in general, which is an abstract collective noun and more of a political concept tied to collectivism and nationalism in China in relation to the citizen (Qiao 2005, 16), whereas the latter refers more to independent individuals, individual rights and responsibilities, which is more of a legal concept in relation to the people (*ibid*, 17). This dissertation mostly uses “citizen” because it is these individual citizens who cherish their rights and have filed PIL for their rights, but it sometimes also uses “people” to stand for collectiveness in politics.

Of course, the meaning or connotation of these concepts and terms is not immutable, which may change with the passage of time. What is more important is to comprehend and place them in a context to analyse social issues at the time. As Jude Howell (2004, 121) has noted:

The concepts of civil society, state, society and economy are never fixed and static; indeed, it is their fluidity, their complex layers of meaning, and the politics of their appropriation or otherwise that make them interesting ... They offer vital analytic tools for critical inquiry into processes of social and political change.

Summing up, by examining PIL in the context of the state-society interaction, this dissertation argues that PIL, as an idea and a litigation instrument based on social justice and rights protection, is a form of citizen resistance in which Chinese citizens make use of the law and judicial process to advance their rights laid down in laws, curb arbitrary government acts, and make their voices heard in present-day China.

### **Academic Contributions**

This study contributes to PIL literature mainly in two aspects. First, it illuminates a grey zone between citizen obedience and citizen resistance by explicitly arguing that PIL is a form of citizen resistance in the post-totalitarian setting that has not been fully addressed in academia so far. As a noteworthy social and legal phenomenon, PIL reflects the will and strategy of rights-conscious civil society actors to resist rights violators,

pursue social justice and further the rule of law in China. To reach their goals, PIL practitioners on the one hand are courageous to stand up for their rights and make their voices heard; on the other hand, they cautiously frame their litigation and topics within the boundaries that the Party can tolerate. In this regard, PIL is indeed “a form of politics” (Hershkoff 2009, 159). This will be helpful to comprehend the underlying causes of this citizen legal action.

Second, this research examines the dynamic interaction between concerned social actors in PIL, which will enhance the understanding of the state-society relations in China from a specific perspective. The study reveals that PIL is not only the interactive outcome of contextual social, political and legal factors over the years, but also the bargaining result between the state and society in the reform era. This means that both the state and civil society try to take advantage of PIL for their respective interests and ends. On the part of the state, it leaves a few institutional channels like PIL for aggrieved citizens to unleash their grievances and complaints while blocking many other channels in order to maintain social stability. As for civil society, PIL is a less politically risky channel for rights protection and public participation. This dynamic interaction will be manifested in the analysis of PIL in the following pages.

It should be noted here that this dissertation is not legal study, although it addresses law-related issues and invokes a number of lawsuits with a public interest nature as its cases. This dissertation is an interdisciplinary study by adopting approaches of political science and sociological research to comprehend and interpret PIL in the context of socio-economic transition in China.

## **Methodology and Sources**

The dissertation is mainly based on case studies and interviews accompanied by the analysis of other relevant literature. The author collected 88 lawsuits with a public interest nature that occurred between 1996 and 2012 throughout the country. At the same time, the author also conducted 25 interviews in Beijing and Shanghai. The general situation of data sources and interviews are as follows.

As litigation types in China at present are categorized as criminal, civil, and administrative litigation, official statistics such as annual *Working Report of the Supreme People's*

*Court* or annual *Law Yearbook* do not count PIL cases. That is to say, those legal cases viewed as PIL are scattered throughout these three categories. Thus, it is difficult for presenting gross figures of PIL.

In the absence of official data on PIL, this study has to draw heavily on case studies. The cases studied in this dissertation were mainly from three sources: China Public Interest Law Net, China Public Interest Litigation Net, and nominated cases for China Top Ten Public Interest Lawsuits Selection 2011 and 2012. There was only one case collected from *Jingji Ribao* (Economic Daily), which is commonly considered as the first public interest lawsuit in China (see Appendix I for details of these cases). The study includes *all* cases published in these sources excluding some duplicated and pending cases when the case collection was completed in mid-2013. These cases are numbered by the author and are available on file with the author.

These sources were chosen for case collection used in this research because they are relevant and reliable in terms of professional consideration and publicity. As already noted, since there has not been a universally acknowledged definition of PIL to date, it poses a question: what kind of cases can be categorized as PIL? Obviously, some coherent and professional standards must be followed in collecting PIL cases with wide recognition.

Of these sources, China Public Interest Law Net and China Public Interest Litigation Net are two websites run by Beijing Dongfang Public Interest and Legal Aid Firm, and Public Interest Law Centre respectively. Both of them which focus on PIL research and the dissemination of PIL-related information regularly upload PIL cases and relevant media news reports they considered to be influential under the category of public interest lawsuits on their websites. China Top Ten Public Interest Lawsuits Selection is a nationwide annually PIL cases selection campaign co-organized by the legal profession and media since 2011, which aims to disseminate the idea of PIL and promote it in practice. The organizers usually nominate 20-30 cases with a public interest nature each year for a public vote and law professionals' comments, from which the annual top ten PIL cases are selected. In short, all the cases published in these sources are widely considered as PIL by law professionals. Thus, the case selection in this study that is based on experts endorsed sources is an available and preferable method given the shortage of official statistics.



By analysing these cases, the research will discuss the main participants in PIL, litigation areas involved and litigation results in the courts. Meanwhile, it also explores such questions as why public-spirited citizens have engaged in PIL, the main disputes involved in these lawsuits, the key issues behind this type of litigation, how the authorities responded to PIL and its litigants, and the impact that PIL has brought about. The case studies in this dissertation are supported by both first- and second-hand materials, which include suit papers, court judgments, media reports, and interview transcripts. It is noted that since this research is not a jurisprudential study, it does not detail the whole process of prosecution and defence of these cases. Rather, the study just aims at providing general information and background of these cases to underline the arguments of why PIL is regarded as a form of citizen resistance.

In addition to case studies, this dissertation involves interviewing concerned actors around PIL between 2009 and 2014. During the fieldwork, the author conducted 25 interviews in Beijing and Shanghai. The interviewees were three law scholars, nine lawyers, two judges, six PIL activists, three journalists and two judicial officials. The identities of them were coded IC1-25 to keep their anonymity (see Appendix II).

The purpose of conducting these interviews was to collect information about, for example, how participants in PIL think about or look at PIL and how they deal with PIL cases. Thus, open-ended interview questions were used to encourage interviewees to fully present their views and opinions around given topics. These interviews generally lasted 1-1½ hours and took place at the interviewees' workplaces. During the interviews, the author initially tried to record them, but noticed that once a recorder had been placed on the table, these interviewees became cautious in response to interview questions. This reaction was apparently out of understandable concerns under the nondemocratic regime. Therefore, the author had to give up this attempt and took notes of their key points and main contents on the spot, then made detailed transcripts by memory as soon as possible after finishing the interview.

As for the identities of the interviewees, the author tried to address this issue in two approaches when writing the first draft of the dissertation. If the interviewees agreed to reveal their identities in this research while being interviewed, their identities would be published. If they were reluctant to be exposed, their identities would remain anonymous. Nonetheless, since the Chinese authorities have recently further tightened con-

trols on academics as well as raised a voice against universal values (Document 9, 2013), the author believed it would be better to code all interviewees' identities in this dissertation in order not to cause any potential trouble for them, because one can never be absolutely sure whether the opinions or comments they have made will offend the party-state. Even if both the interviewees and the author considered their opinions and views to be moderate and constructive, the authorities may make another interpretation of them in certain situations.

Admittedly, this research has some limitations that are manifested in two aspects. First, case studies in this dissertation may not cover all types of PIL due to the fact that Chinese data sources are subject to censorship or self-censorship so they did not contain certain types of assumed sensitive cases related to, for example, land requisitions, human rights abuses, etc., although these cases can also be classified as those with a public interest nature. It is conspicuous that if someone sues for his or her demolished house without fair compensation, this litigation will be surely beneficial to others who are placed in the same situation. Yet these cases are usually categorized as "rights defence" cases in which the motivation of concerned plaintiffs for suing is out of personal consideration and financial loss, which is not in the case of PIL where money is not a key issue. Consequently, these cases fall out of the scope of this dissertation.

Second, due to the restriction of financial resources and capabilities, the interviews were conducted only in Beijing and Shanghai without covering other administrative areas. These two megacities are, of course, worth noting, because not only are they the political and economic centres of China respectively, but also some high-profile public interest lawsuits occurred there. Nonetheless, public-spirited citizens in some other regions such as Henan Province — a less developed province, or Guangdong Province — a highly developed province have also vigorously engaged in PIL. If interviews had been extended to those regions, the author would have been able to collect more diverse first-hand materials to buttress the arguments presented in the dissertation.

In spite of these flaws, the author hopes that this research may still provide a number of intriguing observations and standpoints on PIL in China that can help enhance understanding the underlying causes of this phenomenon. It is noted that all tables and figures

in this dissertation were drawn by the author based on the data sources mentioned above, unless noted otherwise.

## **The Structure and Main Contents**

This dissertation is divided into seven chapters. The introductory chapter offers a brief account of the definition of PIL and rightful resistance as well as clarification of a few relevant concepts and terms such as civil society and post-totalitarianism; presents research background and research questions; reviews previous research on PIL in China; and introduces the methodological approaches and material sources that this study adopts and relies on.

Chapter 1 presents an overall picture of PIL in China, which includes its emergence and evolution, main participants, major litigation targets, and litigation motives of PIL practitioners. It argues that this citizen legal action has attracted broader public involvement with urbanites at the forefront. It surveys the factors shaping and driving PIL from four interrelated aspects: the growing public demand for social justice in an increasingly unequal and conflicted society; a relatively workable legal framework that provides possibilities for citizen resistance in the form of PIL; the increasingly raised legal and rights consciousness among the Chinese populace; and the compromise between preserving social stability by the authorities and protecting legitimate rights by civil society. In the meantime, this chapter also examines the legal basis of PIL by suggesting that current laws and regulations have created legal opportunities for Chinese citizens to use the law and judicial process to advance their rights.

By discussing a number of high-profile lawsuits with a public interest nature, Chapter 2 recounts how ordinary citizens from wider social strata have engaged in PIL to claim their rights and advocate for social justice in concrete contexts. It focuses on four aspects in which this legal action usually involves, including compelling the government to fulfill its duty and pushing for government information openness, challenging state-owned monopolies such as railway authority and bank, calling for equal access to opportunities and rights against a variety of forms of discrimination in education and employment, and struggling for a cleaner and more liveable environment. This chapter aims at demonstrating the willingness and legal practices of Chinese citizens for their rights claim and public participation.

Chapter 3 examines three non-confrontational strategies adopted by PIL practitioners in filing lawsuits. It argues that while PIL litigants try to use this type of litigation as a legal weapon for their rights and ends, they do not intend to challenge the authorities head on in current restrictive political and legal environment. Therefore, they have generally restricted their litigation to less politically-sensitive areas, paid attention to less controversial cases, and claimed less politically-sensitive rights. By means of these strategies, PIL practitioners put a number of social issues that the public have been concerned under the spotlight and achieved positive outcomes in some cases. This chapter also explores how the authorities have responded to this citizen legal action by noting that the party-state leaves some avenues open for PIL proponents, but discourages this type of litigation and even keeps a watchful eye on PIL.

After analysing the dynamic interaction between concerned social actors in PIL including plaintiffs, defendants, judges and media, examining the approaches that the judiciary has used to tackle public interest lawsuits, and exploring media impacts on PIL, Chapter 4 argues that, given the background of a strong state and weak society in China, the strengths and weaknesses of plaintiffs and defendants in the process of bargaining, and the rule of law discourse in society, sometimes seeking a compromise in PIL is a sensible and feasible way for concerned parties, regardless of plaintiffs or defendants, to settle disputes.

Chapter 5 turns to look into PIL impacts on Chinese politics and society. It suggests that PIL should be assessed in a wider socio-political context and based on its long term aims because its social influence is far beyond its immediate outcome in terms of winning cases in the courtroom. This chapter surveys PIL impacts from four interdependent aspects: increasing public awareness of constitutional rights; contributing to reshaping the state-society relations; encouraging legal struggle to advance rights; and serving to strengthen a fledgling civil society.

The concluding chapter summarizes and reviews the main findings and arguments of this research. It concludes that PIL is not only the response to rights infringement and social injustice, but also an alternative channel used by citizens to strive for their rights and make their voices heard during the period of socio-economic transition. Therefore, this citizen legal action actually symbolizes a form of citizen resistance against the state

from civil society under the nondemocratic setting. It suggests that PIL will continue to play a positive role in the Chinese people's struggle for social justice, rule of law and social change in the absence of political reform and democracy.

## Chapter 1

### An Overview of PIL in China

The government is still the previous government, but ordinary people are no longer as they used to be.

— Sun Liping (2014)

PIL has been a popular legal practice in China since the mid-1990s, although the academic orientation of it, according to Fu and Cullen (2009, 8), probably “borrowed largely from the US jurisprudence to explain and justify an indigenous practice”. In fact, PIL was not endorsed by Chinese legislature until August 2012, when its legal status was eventually and formally acknowledged by legislators, nor is it a term commonly used in official discourse. Nonetheless, its idea and practice of advocating for social justice, civil rights and the interests of vulnerable groups have already resonated with civil society. Over the years, this moderate citizen legal action has made considerable development in terms of its broader public participation, wider litigation areas, and increasingly growing social influence.

How did PIL emerge in China? Who have filed PIL? Why do public-spirited citizens tend to use PIL for their rights claim? Who are the main targets of this legal action? What factors have contributed to its emergence and development? Why is PIL tolerated by a repressive government which usually suppresses any grassroots citizen action? Does PIL have legal basis as a litigation instrument? These questions lead us to examine the dynamics of PIL in the context of socio-economic transition these years. This chapter proceeds as follows.

First, it presents an overall picture of PIL in China, including its brief history, main participants and litigation motives of PIL practitioners. Secondly, it highlights four contextual factors shaping and driving PIL that include growing public demand for social jus-

tice, a relatively workable legal framework, increasing legal and rights consciousness among the Chinese populace, and the compromise between stability maintenance and rights protection. Thirdly, it reviews relevant stipulations of laws and regulations regarding PIL on which this legal action relies by arguing that PIL has legal basis and can make sense if citizens sue in the courts starting from their infringed personal interests under the current judicial system.

## **1.1 Broader Public Involvement with Urbanites at the Forefront**

To have a better understanding of PIL, it is necessary to look into how it emerged and has evolved, as well as to identify its main actors, their motives, objectives and major targets. Generally speaking, before the emergence of PIL, ordinary citizens in China mainly relied on administrative channels and the media to address some social issues relevant to public interest and rights infringement by writing complaining letters to government departments, senior officials and media outlets or going to the Letters and Visits Office (*xinfang ban* 信访办) at different administrative levels to request the investigation and correction of alleged official negligence or misconducts. Since the mid-1990s, however, Chinese citizens have found another option: using PIL as a legal weapon to make their complaints, voice their concerns and pursue social justice.

### **1.1.1 The Emergence of PIL**

Despite the fact that the notion of public interest regarding the welfare of the populace and charity has long existed in Chinese society as mentioned in preceding chapter, the history of the notion and practice of PIL is quite short in China. Until the mid-1990s, both law professionals and ordinary citizens devoted to the public good had not yet found this litigation instrument that can be used for social mobilization and public interest. Instead, they put their hopes in administrative channels and the media to handle the grievances and complaints. Then a high-profile lawsuit happened in Southern China that brought PIL into the limelight.

In January 1996, Qiu Jiandong (丘建东), a resident of Longyan City, Fujian Province, made a complaint against a local post and telecommunications office for its overcharg-

ing him ¥0.60 (€0.08) when he made a long-distance phone call at a public telephone booth.<sup>4</sup> He claimed in his proceedings that the defendant had failed to execute the discount policy enacted by then the Ministry of Posts and Telecommunications, which required half-price tariffs for long-distance phone calls late at night and on holidays. Hence, Mr. Qiu requested the court to rule that: (1) the defendant implement this administrative discount policy; and (2) the defendant apologize and refund him ¥1.20 (€0.17), twice what he had paid for the phone call in accordance with Article 49 of the Law on the Protection of Consumer Rights and Interests (LPCRI) promulgated on January 1, 1994.<sup>5</sup> However, after the defendant modified its previous tariff, Mr. Qiu withdrew his suit, asserting that he had realized his litigation objective (case 1; Lin 1996).

This litigation concerned both individual interests and public interest. Obviously, the plaintiff's claim went beyond his personal interests because the defendant's overcharging also harmed other consumers facing the same situation. Even if the sums involved in this individual case were negligible, all the sum total of what should not be collected was possibly large. What is more important about this lawsuit is that an ordinary citizen challenged a state-owned monopoly enterprise in this way, something that had rarely happened before in China. As a consequence, it drew wider media coverage and aroused heated discussion among the public. Qiu Jiandong was later even called "the first person lodging PIL in China" by the media (Yu 1998). This litigation was also considered to promote citizens to be aware of their right to sue on behalf of the public interest (Wu 2006, 59-60).

This ground-breaking case was of significance not only for being the first time that an ordinary citizen sued for the public cause in the court, but also for its publicity and the diffusion of PIL idea about which the public had little knowledge at the time. This litigation also let the public know that they could get access to the judiciary for justice and compensation when they found their rights and the public interest have been violated. After that, other public-minded citizens gained inspiration and encouragement from the

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<sup>4</sup> All conversions in this dissertation are calculated at the exchange rate of RMB ¥7.06/EUR €1 on January 30, 2015.

<sup>5</sup> According to Article 55 of the newly rectified the LPCRI, which was promulgated in March 2014, the amount of compensation increases threefold. Since this case occurred before this law was revised, the plaintiff invoked the 1994 version of LPCRI to make his claim.



case, and brought some other state-owned monopolies like the railways and banks to the courts for their shoddy service or unreasonable charging policies. In doing so, PIL has become a potent legal instrument for citizens to fight against rights violations and make their voices heard in the reform era.

### 1.1.2 Two Phases of PIL

It is commonly held that the development of PIL over the past two decades in China can be roughly divided into two phases (Huang 2006; Chen 2006) in terms of its major participants, litigation areas and social influence.

The first stage was between 1996 and 2004 with the beginning of *Qiu Jiandong* case mentioned above. During this period, public interest lawsuits were mostly lodged by aggrieved consumers, university students, and house owners, whereas lawyers “played a less active role” (Fu & Cullen 2009, 7). The lawsuits that were brought to courts mainly focused on consumer rights protection and anti-discrimination as exemplified in *Qiu Jiandong v. Post and Telecommunications Office* (case 1), *Wang Ying v. Alcohol Brewery* (case 2), *Ge Rui v. Zhengzhou Railway Bureau* (case 3), *Qiao Zhanxiang v. the Ministry of Railways* (case 5), *Jiang Yan and Others v. the Ministry of Education* (case 6), *Zhang Xianzhu v. Personnel Bureau of Wuhu City* (case 13), *Yu Shanlan v. Beijing Branch of Industrial and Commercial Bank of China* (case 21).

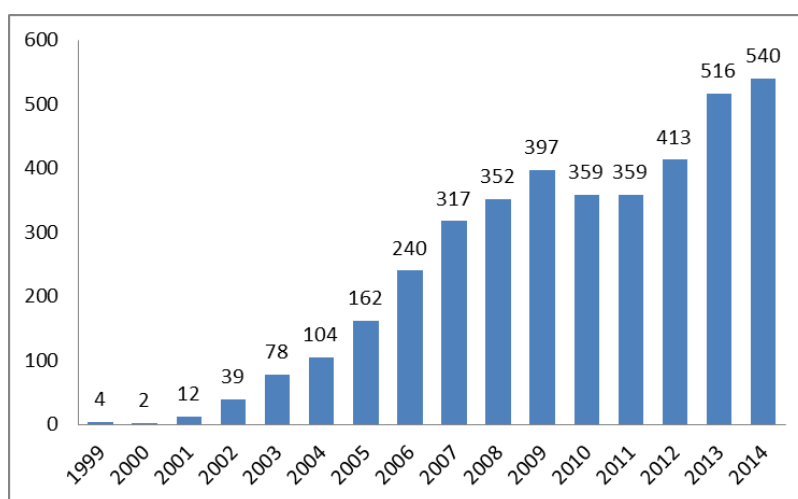
The major targets of these lawsuits were state-owned monopolies like the railways, banks and telecommunications companies as well as administrative agencies. Among these cases, some claimants withdrew their suits after their litigation requests were partially satisfied or had caught public attention; some were rejected or dismissed; and a few obtained favourable rulings. All those lawsuits with a public interest nature — be they successful or unsuccessful in the courts, preliminarily demonstrated the strength and influence of PIL, which also made way for its further development in China.

The second phase that started from 2005 and is still ongoing kicked off with a conference titled “International Forum on Public Interest Litigation, Human Rights Protection and Harmonious Society”, which was held in Suzhou, Jiangsu Province in 2005. At this conference, Chinese lawyers initiated the *Suzhou Declaration on Public Interest Litigation* (Suzhou Declaration 2005), which reflected the expectation of Chinese legal pro-

professionals to build a PIL system and improve human rights protection. The *Suzhou Declaration* proclaimed that “PIL is of significant value in building a harmonious society by bridging individual cases and the rule of law” (“gongyi susong” 2005). As one of the co-organizers of this conference was the Constitutional and Human Rights Committee of All China Lawyers Association, a government-organized civil society organization, it can be interpreted that PIL was acquiesced by the authorities.

With the recognition of its role in protecting civil rights and promoting the rule of law, more lawyers and law scholars began to engage in PIL by either lodging litigation or disseminating PIL information and idea (Tong & Bai 2005; Huang 2006). The litigation areas also expanded to administrative nonfeasance or malfeasance, calling for government information openness, accusing environmental polluters, etc. A batch of notable cases included *Li Gang v. the National Committee for Oral Health, and Others* (case 37), *Dongjian v. the Ministry of Health* (case 38), *All-China Environment Federation v. Dingpa Paper Mill* (case 49), *Lin Lihong v. Shenzhen Customs* (case 53), and *Li Yan v. the Ministry of Education and Others* (case 54). Similar to the first stage, the majority of these lawsuits targeted government agencies and state-owned monopolies.

**Figure 1.1: Growth Rate of Journal Articles on PIL between 1999 and 2014**  
(Total: 3,894)



Source: Drawn by the author on the basis of the data from CNKI

In the meantime, PIL during this period drew more attention from the academic circles, media and public, which can be confirmed by following three indicators. First of all, academic research on PIL has grown rapidly since 2005. By just a simple search containing the key Chinese characters 公益诉讼 (PIL) in CNKI, we can find 3,894 journal articles between 1999 and 2014. Figure 1.1 indicates that the number of journal articles related to PIL had drastically increased from 2005 onward and reached a peak in 2014, which, from one aspect, reflected a higher profile of PIL.

Secondly, a number of international conferences and seminars concerning PIL were held during this period at which lawyers and scholars at home and abroad shared their views and experiences of PIL, which included the above-mentioned “International Forum on Public Interest Litigation, Human Rights Protection and Harmonious Society” in Suzhou, Jiangsu Province in 2005, the international symposium on “Public Interest Litigation and Public Interest Law: Experience from Asia” in Beijing in 2006, and the seminar on “Public Interest Lawyers for the Protection of Women’s Rights” in Shijiazhuang City, Hebei Province in 2007, etc. And last but not least, since 2011, the Chinese legal profession and media have begun to co-hold annually top-ten public interest lawsuits selection campaign, which further disseminates the idea of PIL and increases its influence among the public.

In sum, PIL in China has made steady progress since it emerged in the mid-1990s, although it is debatable whether it has achieved the expected outcome, which will be elaborated in Chapter 5. It goes beyond doubt, nevertheless, that it has provided Chinese citizens with an alternative channel for rights protection and public participation in a one-party state.

### **1.1.3 Wide Geographical Coverage**

As can be seen in Table 1.1 below, public interest lawsuits have occurred throughout the country in both economically developed and less developed regions. Of the 31 provinces, municipalities and autonomous regions in mainland China (this study does not include Taiwan which has its own political and legal system), PIL cases in this research have covered more than half of these administrative areas, which demonstrates the geographical diversity of this form of legal action.

**Table 1.1: Regional Distributions of PIL Cases 1996-2012****(n=88)**

<b>Provinces</b>	<b>Number</b>	<b>Percentage</b>
Beijing	32	36.36
Henan	11	12.50
Guangdong	10	11.36
Jiangsu	6	6.82
Zhejiang	5	5.68
Sichuan	4	4.55
Guizhou	3	3.41
Hunan	3	3.41
Anhui	2	2.27
Fujian	2	2.27
Shandong	2	2.27
Shanghai	2	2.27
Shaanxi	2	2.27
Yunnan	2	2.27
Tianjin	1	1.14
Xinjiang	1	1.14
<b>Total</b>	<b>88</b>	<b>100</b>

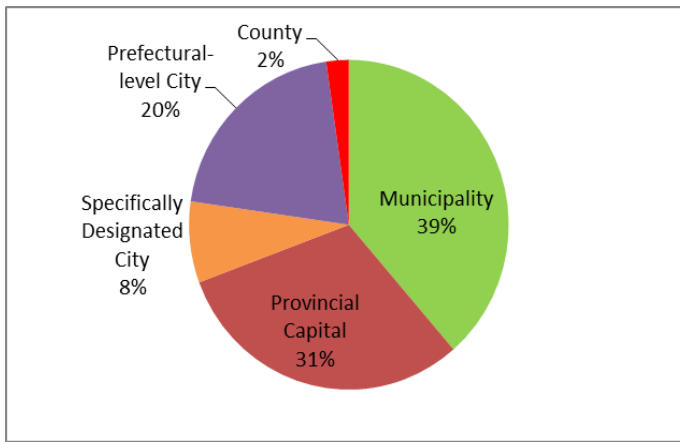
Of these regions, more than one-third of public interest lawsuits occurred in Beijing, which can be explained by the following four factors. First of all, PIL practitioners have more social space there. Paradoxically, at first glance, Beijing — the political centre of China, is supposed to have more red tape and political constraints, and seems to be more conservative, because all central Party, government and legislative organs are gathered together in Beijing. Nonetheless, it is actually more liberal than most other provinces when it comes to PIL. As cabinet-level departments under the State Council which may have different interests and agenda are situated at the same administrative level, they have no absolute authority over each other, which leave room for PIL practitioners to manoeuvre for their goals. As a matter of fact, this is a typical way for rightful resisters to take advantage of inconsistent interests and opinions among different government agencies “in a large fragmented government” (Zald 2000, 12). On the other hand, in provinces outside Beijing, local government agencies enjoy full authority under their jurisdiction. Consequently, there is relatively less room left for PIL proponents in these regions.

Secondly, in relation to the arguments above, there are more influential legal CSOs in Beijing, which have more human and social resources and can provide more professional legal services. Thirdly, as a highly competitive media hub where nearly all important state media, trade media, commercial media and website portals are based, Beijing has

huge media influence over the whole country. If a well-grounded lawsuit is filed there, it can receive more extensive exposure than anywhere else in China. Accordingly, its social effect can be geometrically amplified. Finally, partly for the same reasons above, the judicial authorities in Beijing are also under the spotlight as are government departments and interest groups, which make them more cautious in dealing with a few influential lawsuits with a public interest nature. Hence, PIL cases can be relatively easy registered and fairly tried there compared with other regions.

**Figure 1.2: Location Distributions of PIL Cases 1996-2012**

(n=88)



At the same time, from the location distributions of PIL cases presented in Figure 1.2 above, we can see that 98% of lawsuits occurred in large- and medium-sized cities such as municipalities like Beijing and Shanghai, provincial capitals like Nanjing and Chengdu, specifically designated cities in national economic planning like Shenzhen and Qingdao, and prefectural-level cities like Wuhu in Anhui Province and Dongguan in Guangdong Province. There are possibly four explanations for it. First, it reflects the rapid urbanization in China in which an increasing proportion of the rural population has moved to cities. Consequently, more lawsuits have occurred in those cities. Second, there are more social and human resources in large- and medium-sized cities that can be mobilized to amplify the voices of PIL litigants so that their litigation requests and claims can catch more public attention. Third, urban residents are more educated and thus more sensitive to their assumed rights relative to rural population. Fourth, judges in cities, especially in large ones, are more professional and efficient in handling those lawsuits with a public interest nature than those in rural areas.

### 1.1.4 Who has filed PIL?

As a form of citizen resistance, PIL is favoured and conducted by broad social strata and social groups throughout the country with urbanites at the forefront. As shown in Table 1.2 below, PIL practitioners have come from almost all walks of life by occupation, including lawyers, law scholars, university students, consumers, peasants, school teachers, government officials, journalists, CSOs, and procuratorate, etc.

**Table 1.2: Composition of PIL Plaintiffs 1996–2012**  
(n=88)

<b>Plaintiff</b>	<b>Number</b>	<b>Percentage</b>
University student	22	25.00
Lawyer	16	18.18
Consumer <sup>a</sup>	11	12.50
Law scholar	6	6.82
Peasant	6	6.82
Civil Society Organization	4	4.55
Disabled person	4	4.55
Procuratorate	3	3.41
Government agency	2	2.27
House owner <sup>b</sup>	2	2.27
Retiree <sup>c</sup>	2	2.27
School teacher	2	2.27
Bank employee	1	1.14
Environmental protection volunteer	1	1.14
Government official	1	1.14
Legal worker	1	1.14
Journalist	1	1.14
Private entrepreneur	1	1.14
Pupil	1	1.14
Textile worker	1	1.14
<b>Total</b>	<b>88</b>	<b>100</b>

Notes:

a. The group of consumers overlaps with other groups who are also consumers. There are two reasons to make this category: (1) The sources invoked in this research did not reveal the information on those plaintiffs' occupation; (2) Those cited lawsuits were focused on consumer rights.

b. The category of this group also overlaps with other groups. As plaintiffs' occupations in these cases were not revealed, and the complainants sued the government for disputable urban planning that might affect their environment and quality of life, they are categorized as house owners.

c. In these cases, there are two retirees who used to be the cadres of state-owned enterprises.

The majority of these PIL litigants is urban population or lives in urban areas. Compared to those living in rural areas, urban residents generally enjoy more education, higher income and better living standard. Moreover, they have more opportunities to get access to relevant information and resources they need in making a complaint. These advantages make them more aware of their rights and give them more courage to stand up for their rights.

A few lawsuits with a public interest nature in this study were initiated by local Environmental Protection Bureau (EPB) and the procuratorate, which usually target privately-owned, small- and medium-sized enterprises for their environmental pollution and damage to state-owned assets. Nearly all those lawsuits brought to the courts obtained favourable rulings or reached a settlement for the plaintiffs — environmental watchdog and state prosecutor. For instance, the EPB of Kunming City, Yunnan Province filed a lawsuit against two privately-owned companies for their pollution of the river and won the case (case 62). In another case, the EPB of Dongying City, Shandong Province also obtained a favourable ruling for suing a chemical factory and others for their dumping of industrial waste into the land (case 87). There were three local procuratorial organs in Shenzhen, Guangdong Province, Pinghu City and Haining City, Zhejiang Province involving three lawsuits pertaining to environmental pollution, all of which reached settlements favourable to claimants (case 60, 66 & 80). The defendants — polluting enterprises in these lawsuits, paid fines and promised to cease discharging pollutants.

It is no doubt that such positive outcomes brought about by EPBs and the procuratorates are beneficial to public interest. However, whether these environmental watchdogs and procuratorial organs are eligible litigants in PIL is debatable. Take the former for example. All EPBs at various administrative levels are government watchdogs in the field and empowered to oversee those enterprises and persons polluting the environment in accordance with the law. Article 10 of the Environmental Protection Law (EPL) prescribes as follows:

The competent department of environmental protection administration under the State Council shall conduct unified supervision and management of the environmental protection work throughout the country.

Furthermore, Article 25 of the EPL elucidates that EPB and other relevant government departments have administrative power to monitor and penalize all enterprises which are involved in pollution of the environment:

Where enterprises, public institutions and other producers and business operators discharge pollutants in violation of laws and regulations, which may cause potential severe pollution, competent environmental protection administrations of the people's governments at or above the county level and other departments that are responsible for environmental supervision and administration may seal up and detain the facilities and equipments that discharge pollutants.

In light of these explicit stipulations, the EPB — the environmental watchdog does not have to rely on the judiciary to exercise its administrative power. In contrast, it has already possessed sufficient administrative power and capability to carry out its duty. Going back to those above-mentioned two cases, the EPBs in these two cities should have dealt with those polluting enterprises by using a variety of administrative measures such as issuing a warning, imposing fines, or seizing their facilities and equipments. Nonetheless, they failed to do the job within their jurisdiction and turned to seek help from the judiciary, which looked like more just of a show of litigation and actually revealed their administrative ineptitude.<sup>6</sup>

As for the procuratorate which lodges PIL, it is also a debatable topic in the legal profession, but quite a number of law scholars do not think it is an appropriate litigant in PIL in the context of China for two reasons (Yang 2006; Wu 2006, 117-129; Xu 2009, 186-198). First, relevant laws do not grant this function to the procuratorate. For instance, Article 14 of the Civil Procedure Law provides: “The People’s Procuratorate has

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<sup>6</sup> It is noted that both local and central governments in China possess sufficient power and means to deal with environmental problems so long as they are really determined to do. For example, Beijing is infamous for its severe air pollution, but the weather there was totally clear during the Asia-Pacific Economic Cooperation meeting (APEC) in 2014. This phenomenon was called “APEC Blue”. What happened to it then? Because a series of tough measures were taken by the government to control air pollution during this conference, which included restricting the use of private cars, keeping 70 percent of public vehicles for governments and institutions off the road, and suspending the production of polluting industries and construction sites around Beijing (Zheng 2014).



the right of legal supervision over the trial of civil cases.” Article 10 of the Administrative Litigation Law also enunciates: “The People’s Procuratorate has the right of legal supervision over the trial of administrative cases, but only through the way of appealing for retrial.” In terms of these provisions, the procuratorate is empowered to monitor the trial of cases, but this function of supervision is restricted to appeal for retrial of cases rather than to directly file lawsuits in civil cases.

The second reason refers to the power of the procuratorate in China. Contrary to other civil plaintiffs who are, legally speaking, equal to their opponents in the court, the procuratorate is one of powerful law enforcement agencies, which together with the Public Security Bureau and the Court are part of the political and legal apparatus (*zhengfa jiguan* 政法机关) under the leadership of the Political and Law Committee of the Party (*zhengfawei* 政法委). This means that the procuratorate has state power to influence litigation outcome as a litigating party in PIL, which is hardly deemed fair to its opponents. Thus, PIL cases lodged by EPBs and procuratorial organs are not the focus of this research.

In short, compared to other forms of popular contention, PIL has attracted the attention and support from members of the general public instead of just one or two particular groups manifested in some protests and demonstrations. For example, people suffering from housing relocation may take to the street to ask for fair compensation; laid-off workers may engage in a sit-in to protest against corrupt corporate managers and unresponsive government agencies. Nonetheless, PIL practitioners who come from wider social groups pay attention to various social issues with no particular focus, which is one of their advantages to draw wide public attention and support.

### 1.1.5 Why Sue?

The question as to why people engage in PIL can be answered based on reasons of different individuals and groups who may have different motives and use PIL for different purposes. Most of them were the victims of commodity and service fraud, bullying clauses by state-owned enterprises, tainted food, environmental pollution, and administrative nonfeasance or malfeasance. Therefore they tried to seek justice and compensation through PIL. Some of them tried to foster public policy and social change. Whatever-

er reasons they may have had, they share a common goal: protection of their rights enshrined in law and advancing social justice out of their rights awareness and citizen awareness.

We can see in Table 1.2 above that lawyers and law scholars accounted for 25% of PIL litigants. They generally have better litigation expertise and social resources which other PIL practitioners may lack, which is conducive not only to soliciting more public attention and achieving positive outcomes, but also to leading to “the professionalization of PIL” (Fu & Cullen 2009, 9). In a number of high-profile PIL cases such as *Li Gang v. the National Committee for Oral Health, and Others*, *Jiang Yan and Others v. the Ministry of Education* discussed later, the plaintiffs or their litigation representatives were either law scholars or lawyers who played a major part in putting these lawsuits and concerned issues in the spotlight at that point.

More importantly, these law professionals are personally motivated to make their contribution to the rule of law and social progress by means of PIL. All interviewed law scholars and lawyers expressed this willingness and aspiration. For this, an interviewed law scholar commented that they try to “foster the rule of law via this sort of litigation” (IC1). A lawyer who focuses on labour rights said: “As a lawyer, I will do everything possible to help aggrieved workers defend their legal rights using the law.” (IC20) This is what Horsley (2007, 104) has observed:

[...] despite sobering structural and policy impediments to the development in China of a truly independent legal profession, many lawyers and legal scholars are becoming more active in pushing forward the establishment of rule of law.

It should be noted that those who engage in PIL are generally classified as public interest lawyers, or public interest practitioners or public interest activists instead of rights defence lawyers (*weiquan lushi* 维权律师) or rights defence activists. With reference to the difference between them, according to Fu (2011, 341), the former are “politically moderate”, while the latter are “politically more challenging”. In terms of litigation areas in which they are involved, the former usually do not touch politically-sensitive cases such as housing demolition or human rights abuse, whereas the latter do not shy away

from these cases. Therefore, it is not surprising that rights defence lawyers have currently become one of main targets of stability maintenance (*weiwen* 维稳), i.e., they are suppressed by the authorities with a heavy hand. A recent example happened in July 2015, when the authorities detained or interrogated more than 200 human rights lawyers and associates (Jacobs & Buckley 2015). Most of them were released later, but some were arrested and charged with crime. This incident was called “Black Friday” by international media (Chin 2016). Moreover, in an article on July 31, 2012 in *People’s Daily*, the main mouthpiece of the Party, “rights defence lawyers, underground churches, dissidents, network leaders and disadvantaged groups” were labelled “hostile forces” (Yuan 2012). It was the first time that the mainstream media had openly denounced these groups with rights defence lawyers deemed the major threat.

Even though this article published in the *People’s Daily* did not target PIL practitioners, the official hostility towards rights defence lawyers inevitably has a chilling effect on PIL proponents as well, because both of them are engaged in rights-based litigation. It can be inferred that if, for instance, PIL practitioners claim some rights that the Party does not favour someday, they may also be labelled as “hostile forces”. It is because of acknowledging the risk of taking rights defence cases that all interviewed lawyers, law scholars and other actors involving PIL insisted on claiming that they were engaged in public interest lawsuits instead of rights defence cases (IC5, IC14 & IC20).

Another group that deserves attention is university students who were also behind 25% of total cases. Their legal activism firstly springs from their sensitivity to opportunity inequality in higher education and employment. Of 22 lawsuits filed by them in the sample, 12 (54.55%) concerned equal access to rights and opportunities against discrimination. Some students charged unfair university admissions policy leading to unequal opportunities for those with the same examination scores but different area household registration (case 6). Others complained that they were discriminated against in civil servants recruitment because of height and age requirements that were not justified (case 8 & 32).

In the meantime, their legal activism also emanates from their will and courage to promote the rule of law as youth who are less sophisticated and more courageous to challenge the status quo and the authority, which was demonstrated in a number of lawsuits

they have filed invoked in this dissertation. For instance, some of them brought government agencies before the court to test the enforcement of legislation related to government information openness (case 16, 54 & 82); others examined whether the judiciary performs its duty to protect consumer rights (case 18, 25 & 34); still, others challenged a variety of discrimination involving in education and employment (case 8, 41 & 55). During the litigation process, these students have deepened their understanding of the law and made their efforts to contribute to the rule of law.

In the course of PIL development, legal CSOs have also been active actors, which include the Open Constitution Initiative (OCI), Beijing Dongfang Public Interest and Legal Aid Law Firm, the Centre for Legal Assistance to Pollution Victims of China University of Political Science and Law, the Centre for the Protection of the Rights of the Socially Vulnerable of Wuhan University, and the Labour Law Service Centre of East China University of Political Science and Law (LLSC), etc. They generally possess such features as the voluntary nature, relative autonomy, sympathy for vulnerable people, and enthusiasm for the public cause. Moreover, they are composed of like-minded intellectuals who have more time, skills, and social resources that PIL needs. They also have such capabilities as advocacy, lobbying and publicity that individual litigants may be short of.

These legal CSOs try to precipitate the improvement and adjustment of some outdated or unfair public policies as well as help those in need to defend their rights through PIL. The OCI asserts that its mission is “to promote concerned system reform through providing legal advice and assistance to the selected cases accompanied by public opinion” (Open Constitution Initiative 2006). The LLSC claims that its objective is “to protect the labour rights in Shanghai, make workers be aware of their rights and encourage the efforts of the local government on the protection of labour rights” (Labour Law Service Centre 2009). To reach these goals, they either represented aggrieved individuals or acted as plaintiffs to sue concerned government agencies and vested interests.

Over time, a number of PIL proponents have come into the limelight for their contributions to social justice, the interests of disadvantaged groups, and the rule of law. Among of them is Hao Jinsong (郝劲松), a public interest lawyer who repeatedly took the railway authorities and other public utilities to court for their infringement of consumer

rights (case 17, 18, 19 & 23); Yu Shanlan (喻山澜), a journalist who filed two influential lawsuits to challenge a state-owned bank and a law enforcement agency (case 21); Chen Faqing (陈法庆), a peasant who lodged a succession of lawsuits against environmental polluters and irresponsible or unresponsive government agencies (case 9 & 12); Qiu Jiandong (丘建东), a self-taught legal worker who has filed a string of legal proceedings involving wider social issues since 1996, when he initiated the first-ever public interest case (case 1 & 15); Zhou Wei (周威), a law professor who represented plaintiffs in several influential cases to fight against discrimination relevant to height, origin, and hepatitis B virus carriers (case 8 & 13); and Li Gang (李刚), a law scholar who instigated three lawsuits against the government-backed professional association, administrative agencies and business companies for their power-for-money business, and infringement of consumer rights (case 27, 28 & 37). A few of these lawsuits filed by them will be discussed later.

### 1.1.6 The Main Targets of PIL

Who and what institutions are the main targets of PIL? A few PIL practitioners repeatedly claimed that what they have tried to do is to help the government improve its work through PIL without ulterior motives. For example, Qiu Jiandong (Xu 2007), the first person to lodge PIL in China, spoke of the motive of those including himself who initiated such litigation as follows:

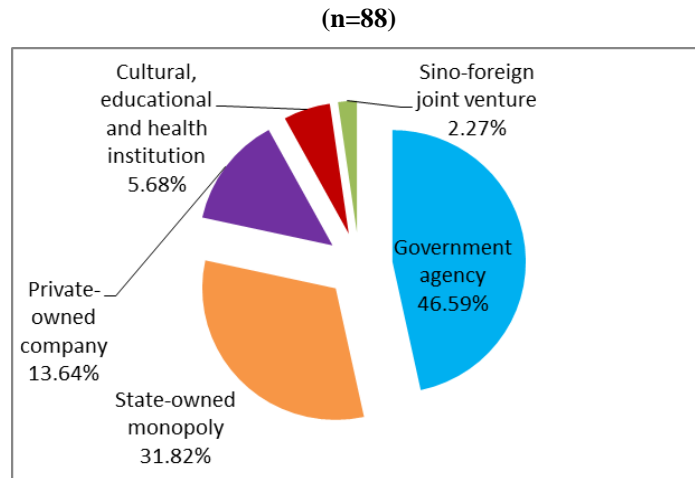
We are not trouble-makers, absolutely not, nor do we intend to challenge the government. The work we are doing is to help the government locate and deal with existing problems through PIL.

Wang Zhenyu (Wang 2010), a public interest lawyer who represented several high-profile PIL cases regarding anti-discrimination, and miscarriage of justice relating to the execution of an innocent young man, has made similar claim:

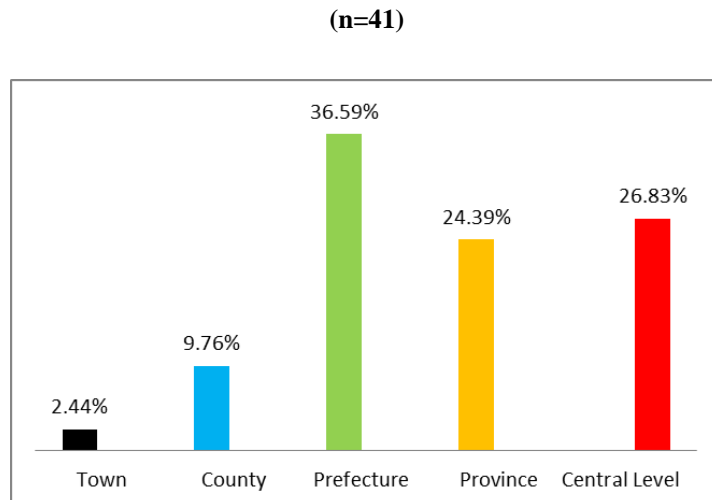
We are the bridge linking the government and people. We try to warn the government through PIL that something it did was wrong or inappropriate. I think this is a reasonable approach that can avoid more social conflicts.

In their opinion, PIL practitioners want to improve policy implementation and oversee government work instead of charging the state system. These comments have demonstrated their political cautiousness. In effect, some of them may sincerely believe in this standpoint, whereas others may just keep a low-profile to avoid potential interference and political risks.

**Figure 1.3: Composition of PIL Defendants 1996-2012**



**Figure 1.4: PIL Cases Aiming at Government at Different Levels 1996-2012**



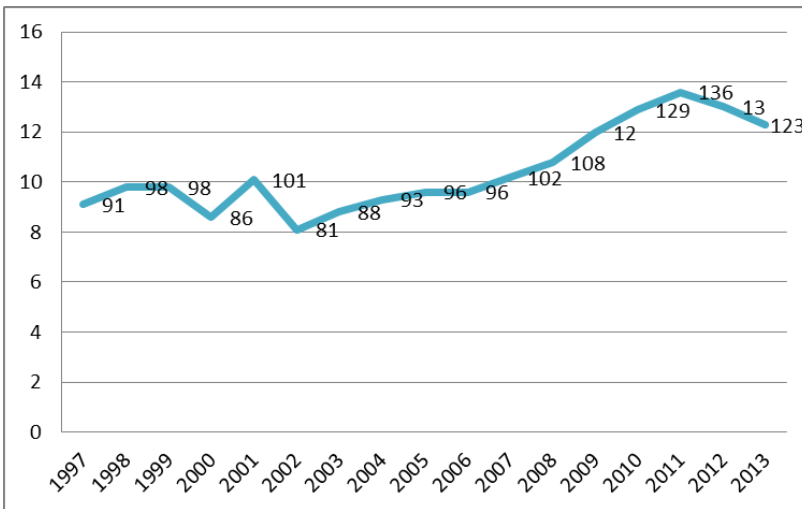
Nonetheless, no matter whether they admit it or not, the related data in this study presents another picture, which indicates that the government and state-owned monopolies are major targets of this type of litigation, because they amounted to 78.41% of all PIL

cases as seen in Figure 1.3 above. Of these cases, nearly half of them (46.59%) targeted the government agencies. Meanwhile, Figure 1.4 shows that PIL aimed at government agencies at all levels from town, county, prefectural, provincial all the way to central government, but mostly centred on the three levels: prefectural-, provincial- and central-level government.

Figure 1.3 also displays that as many as 31.82% of PIL cases aims to state-owned monopolies like the railways, banks and telecommunications companies for their infringement of consumer rights. Those state-owned industrial giants are often criticized for ripping off consumers by taking advantage of their privileges of exclusive market access and price manipulation endorsed by concerned government supervisory entities. As a few of them like the railway authority are granted some administrative functions, charging them in the court is virtually tantamount to indirectly challenging the government.

**Figure 1.5: First Trial Administrative Cases Accepted by Courts 1997-2013**

(Unit=1,000)



Source: Drawn by the author on the basis of data from *China Statistical Yearbook 2014*, p. 776.

Since the accurate figures of PIL cases involving the government remain little known, the first trial administrative cases accepted by courts may shed some light on it, as those cases almost exclusively targeted government agencies and government officials. It can be seen in Figure 1.5 above that the number of these cases accepted by courts was about

100,000 annually between 1997 and 2009. Since 2010, it has increased to 120,000 – 130,000 annually. If only 10% of these cases fell into the category of PIL, the figure would still be quite high.

This outcome should come as no surprise because a series of social issues such as fast-rising housing prices, contaminated food, rural-urban inequality, pervasive corruption, and increasingly worse environment primarily originate from unfair public policies, administrative nonfeasance or malfeasance, and interest groups' manipulation of the market and prices, which have long been concerning the public.

In the view of Zhang, *et al* (2008, 33), Chinese government which plays a leading role in the distribution of resources often directly intervenes in the market. Wu (2011) remarks that the government intervention in the market and vested interests domination over key service industries have become major problems in China. What is more, the process of transition to a market economy is fraught with injustice and inequality which have favoured government officials and vested interests. According to a report entitled “The Report on Salary, Reward and Household Property of Public Servants at Local Party and Government Departments” drafted by the Research Department of the State Council, the General Office of the Central Commission for Discipline Inspection of the CCP and Chinese Academy of Social Sciences in April 2010 (see [www.cnrencai.com](http://www.cnrencai.com)), 1.31 million officials at county-level above and their families account for 80 percent of national wealth; the annual revenue of these officials per capita is 8-25 times than that of local urban population, and 25-85 times than that of local rural population. Against this background, some scholars (Wang 2013, 91) have concluded:

[...] the overall situation that the government is seeking gain at the expense of ordinary people has not changed; the phenomenon that government officials are snatching interests by way of public power has not been contained.

In light of such rampant corruption and injustice, a few scholars even argued that the Chinese government has become a self-interested type of a political group, which grabs the wealth of society by means of self-interested legislation and policies (He 2010).



Additionally, as mentioned above, the article in the *People's Daily* also labelled “disadvantaged groups” as “hostile forces” (Yuan 2012). It is a disturbing signal that the Party goes so far as to regard a lower social class as the threat because “disadvantaged groups” is a broader concept that may include migrant labourers, displaced rural peasants, laid-off workers, disabled persons, pollution victims, and other aggrieved persons. Such blatant hostility to vulnerable people displays large cracks between the authorities and people. Under such circumstances, ordinary people have increasingly distrusted the government and state-owned monopolies, and have frequently taken them to court and attempted to make them “play by their own rules and abide by principles they have established” (O'Brien & Li 2006, 116; Shen 2010, 3-17; Xu 2009, 295-299).

In a nutshell, PIL has attracted widespread public attention and public involvement. Of them, the urban population including lawyers, law scholars, university students, and consumers is the major force. This citizen legal action largely targets irresponsible or unresponsive government agencies and arrogant state-owned monopolies, which reflects the fact that Chinese citizens are increasingly taking their rights seriously and willing to defend their rights through the law.

## **1.2 The Factors Driving PIL**

Why did PIL emerge in the mid-1990s rather than 1980s or some other time? Examining its emergence and development over the years, PIL is not only intricately interwoven with wide-ranging changes in Chinese society and politics since the late 1970s, when China adopted the reform and opening-up policy, but also the direct or indirect result of these changes. Many scholars have presented a number of insightful explanations about it. Some attributed it to the emerging pluralistic society and diverse interest groups under which disadvantaged groups try to put forward their interest demands in the name of public interest (Xu 2009, 295-299). Others considered it as the awakening of citizens' rights awareness and democracy awareness (Guo 2009, 373). Still, others regarded it as the increasing political opportunities, i.e., aggrieved people or public-spirited citizens can exploit the gap between law and reality for their ends (Fu 2011, 346-347). All these views and opinions are helpful to broadening our horizons and understanding this phenomenon.

Nonetheless, as PIL involves a wide range of issues that can be examined from a variety of perspectives, it is unavoidable that there is still something that has not been fully addressed. One of them is how to look at the emergence of PIL from the perspective of post-totalitarian state-society relations. Thus, this research examines key factors shaping and driving PIL in China from four interrelated aspects: the growing public demand for social justice and fairness, a relatively workable legal framework that provides possibilities for citizens to seek judicial redress in the courtroom, increasing legal and rights consciousness among the Chinese populace, and compromise between preserving social stability by the authorities and striving for legitimate rights by civil society in the reform era.

### **1.2.1 The Growing Public Demands for Social Justice**

The first factor that has led to the growing occurrence of PIL comes from an increasing public demands for social justice and equality. The on-going socio-economic transition has witnessed not only rapid economic and social development, but also severe economic inequality and social injustice, which has made the public rethink some neglected issues such as justice-based development and vulnerable groups' rights protection in the reform era. Thus, the public is calling for the building of a fairer and more just society by way of available legal means.

The past 30 years have presented a complicated picture of contemporary China. It has become the world's second largest economy in terms of gross domestic product (World Bank 2014). The Beijing Summer Olympic Games in 2008, Shanghai World Expo Exhibition in 2010 and the Victory Day Parade in 2015 have showcased a modernized, successful and powerful image of China to the world. Yet China has also ranked as one of the most inequitable and unequal countries in the world (Sicular 2013). Take the Gini index, the most commonly used measure of inequality, for example. The Gini index of Chinese residents' income in 2014 was 0.469, whereas this index among major developed countries was only between 0.24 and 0.36 in the same year (Statista 2014). Over the years, China's "dynamic but ruthless capitalist economy" (Howell 2004, 124) based on exploiting migrant workers, ravaging natural resources and disregarding citizen rights has resulted in considerable negative consequences, which include the widening gap between the rich and poor, environmental degradation, worsening food safety, abuse of power, and rampant corruption (Zhang 2014, 22-28).

It is admitted that in the course of economic and social development, some social inequality problems are inevitable. A U.N. document entitled *Social Justice in an Open World: The Role of the United Nations* acknowledges the fact, but it (United Nations Department of Economic and Social Affairs 2006, 2) suggests that relative social equality or social justice should be maintained:

[...] when people engage in economic activity for survival, personal and professional growth, and the collective welfare of society, *inequality is inevitable but should remain within acceptable limits* that may vary according to the particular circumstances [emphasis added].

The problem in China today is that vulnerable groups such as migrant labourers, peasants and laid-off workers have enjoyed less fruits of economic growth. On the contrary, they have to suffer systemic poverty and various types of discrimination. In the name of reform and development, their legitimate rights and interests are often ignored and even knowingly violated (Xu 2009, 299-300), which might go beyond “acceptable limits”. Such blatant rights violation without considering minimum social justice and equality inevitably spawns severe social tension and leads to social conflicts for which the same U.N. document (*ibid*, 6) puts it this way:

From the comprehensive global perspectives shaped by the United Nations Charter and the Universal Declaration of Human Rights, neglect of the pursuit of social justice in all its dimensions translates into de facto acceptance of a future marred by violence, repression and chaos.

This warning has proved strikingly prescient of the current situation in China manifested in increasing social conflicts. It is estimated that annual mass incidents or large scale social incidents that are unapproved collective actions like demonstrations, strikes, and sit-ins usually triggered by rights violations and environmental concerns are in the tens of thousands. In 2003, for the first time, the authorities officially announced annual statistical data on mass incidents (He 2016). There were 58000 mass incidents in 2003, 74000 in 2004, 87000 in 2005, more than 100,000 in 2007, but the party-state has no longer released relevant information since 2008 (*ibid*). According to the estimation, there were 172000 mass incidents in 2014 (Zhang & Chen 2015). For instance, in just a

little more than six months between the end of 2011 and July 2012, a series of high-profile mass incidents happened in Wukan village, Guangdong Province in South China (Wines 2011), Shifang City, Sichuan Province in West China (Branigan 2012) and Qidong City, Jiangsu Province in East China (Perlez 2012) in which a large number of local people took to the streets to protest against the corruption of government officials, and the construction of polluting chemical plants and oil refineries.

To make thing worse, since aggrieved persons often have nowhere to seek justice, a few of them even indiscriminately took revenge on society by resorting to violence that can be seen in a string of school killings and bombings. It was reported that in less than two months from 23 March to 12 May in 2010, there were six assaults on school children in the six provinces of Fujian, Guangxi, Guangdong, Jiangsu, Shandong and Shaanxi, leaving 20 persons, mostly children dead and 73 wounded (Chen 2010). As for bombings, just within one month in July 2013, there were two critical incidents. One happened in Xiamen City, Fujian Province where a 60-year-old petitioner named Chen Shuizong (陈水总) killed 47 people including himself by setting fire on a crowded bus (Yu 2013). Another occurred at Beijing International Airport where Ji Zhongxing (冀中星), a wheelchair-bound petitioner, set off a homemade bomb injuring himself and a security guard to protest at his beating by security personnel that left him paralyzed (*ibid*).

This spate of mass incidents, violence and tragedies demonstrate how serious social tensions have become for which a news commentary in the official media even likens current Chinese society to a pressure cooker with no release valve so that nobody knows when the societal tension will exceed its limit and trigger widespread unrest (“China” 2013). This pessimistic situation and prospect must have surely concerned the public, especially urban middle class who have benefited from economic growth, but are still vulnerable to social injustice and unbounded public power. Therefore, they try to pressure the authorities to actively address emerging social problems.

The growing social tension and increasing public demand for social justice compel the authorities to re-examine their development policy and to reconsider disadvantaged groups’ interests that have long been intentionally or unintentionally ignored. After all, rapid economic growth at the expense of vulnerable people’s rights cannot lead to the long-lasting and authentic social stability that the Party desperately pursues.

In response to the public concerns, Hu Jintao (胡锦涛), the former General Secretary of Chinese Communist Party (CCP) and Chinese President, initiated the building of a “harmonious society” by advocating the “scientific outlook on development” and “putting people first” at the Third Plenary Session of the 16<sup>th</sup> National Congress of the CCP in 2003. Xi Jinping (习近平), the current General Secretary of the CCP and Chinese President, also coined the “China Dream” in 2012 when he came to power. In his speech at the closing meeting of the First Session of 12<sup>th</sup> National People’s Congress (NPC), he demanded to “listen to the voice of the people, respond to the expectations of the people, guarantee people’s equal right to participate and develop, and maintain social equality and justice” (Xi 2013). These ideas and speeches signified that the Party is aware of the social problems and tries to make some adjustments in its policies.

It is this subtle shift of public opinion and social mentality from previously fanatically pursuing economic growth at any cost to favouring justice-based economic and social development and caring for vulnerable groups’ interests that has provided impetus for PIL. Hence, at the root of PIL is a yearning for social justice and social equality from ordinary citizens.

### **1.2.2 A Relatively Workable Legal Framework**

As a law-based legal action, PIL is bound up with certain political and legal conditions. In other words, the emergence of PIL is also attributed to the new development of the legal and judicial system on which PIL has relied since the early 1980s, although the improvement of the legal system remains rudimentary.

For a long time since the CCP came to power until the reform era, China was under the shadow of “class struggle” without a sound legal environment for citizens to make rights claim in the courts (Li 2010). In the words of Wang Chenguang, a Chinese legal scholar, contemporary China under the Communist Party experienced “the winding path towards establishing a legal system” (2010, 3). According to his research, Chinese legal system construction can be divided into four stages: the initial stage, the stagnant stage, the destructive period, and the golden era (*ibid*, 3-5).

The first stage between 1949 and 1956 witnessed the CCP abolishing old laws and conventions, but not establishing new ones except for the promulgation of the 1954 Constitution and a few regulatory documents. To be sure, these laws, ordinances and regula-

tions provided legal basis for new China. In the meantime, some basic principles and institutions of Chinese judiciary were established, which included the system of mutual check and mutual restraint between public security, procuratorate and court, as well as the idea that all are equal before the law (Li 2010, 4).

The second stage was from 1957 to 1966. During this period, the Party initiated the large scale Anti-Rightist Campaign through which it further deprived citizens of their basic political rights and reinforced the rule of man system, which can be regarded as a feature in Chinese totalitarianism. It was reported that Mao (general office 1991, 102) made a speech at an enlarged conference of the Politburo of the CCP in Beidaihe (北戴河) in August 1958, claiming law is not essential:

Law is something that can be utilized, but we have our own way ... We have too many articles in civil code and criminal law! Who remembers them? I participated in drafting the Constitution, but I do not remember it, either ... We maintain public order by relying mainly on resolutions and conferences, four times a year, instead of civil code or criminal law.

At this conference, Liu Shaoqi, the President of the state at that time, also claimed that governing society relied on the rule of man instead of rule of law while commenting social governance (*ibid*). In his words, “law can only be considered as a reference” (*ibid*).

Seen from the speeches of these Chinese supreme leaders, it becomes clear that they did not care about the law and rule of law at all. They only regarded the law as a sort of expedience of the governance. Due to this way of thinking, it was no surprise that the construction of the rule of law in the early 1950s went backwards. This was manifested in the way that such basic principles as the equality before the law, and court’s independency to make judgments under the law were criticised (Li 2010, 6). During this period, some legal institutions such as the Ministry of Justice, the Ministry of Supervision and Legislative Affairs Bureau of State Council were revoked; and the judicial arrangement of mutual check and mutual restraint between public security, procuratorate and court was cancelled, too (*ibid*).

The third stage between 1966 and 1976 was the most destructive because the CCP completely destroyed its fragile legal system and took away citizens' rights without any legal procedures through the Cultural Revolution (Wang 2010, 4). During this period, the Central Cultural Revolution Group became an actual supreme power institution, whereas the function of the National People's Congress and its Standing Committee was suspended (Li 2010, 7). Even the CCP leadership had to admit after Mao that the Cultural Revolution "was responsible for the most severe setback and heaviest losses" in the PRC history ("guanyu" 1981).

The fourth stage started in the late 1970s. In the view of Wang (2010, 5), as the Party eventually became aware of the fact that a modernized and stable country is dependent upon the rule of law, it started the process of re-establishing its legal system. Meanwhile, until the end of 1982, countless unjust convictions and wrongful cases involving three millions cadres and hundreds of thousands of innocent ordinary people during the Cultural Revolution were redressed (You, *et al.* 1993, Vol. 4, 42). Based on the legal development over the years, Wang (2010, 1) has concluded:

During the thirty years since the founding of the legal system in 1978, China has transformed from near lawlessness into a developed legal system; from "smashing the people's court" to the establishment of legislative, judicial, and legal administration and enforcement system, from the rule of man to the rule of law [quotation marks in original].

It should be noted that the totalitarian legacy of Mao still lingers over the judicial system so the transformation from the rule of man to the rule of law in China that Wang mentioned is still facing ups and downs and has a long way to go. For 2015, the World Justice Project ranked China 71<sup>st</sup> in the world on the rule of law among 102 countries, between Ukraine and Tanzania (World Justice Project 2015, 6). This low ranking reflects the current political and legal reality in China for which even Wang Shengjun, the former President of the Supreme People's Court admitted that the legal environment to guarantee people to orderly participate in social affairs has not formed; people's democratic rights still could not be effectively protected; the system and mechanism of respecting and protecting human rights would need further improvement (Wang 2007).

Moreover, sometimes even the meaning of the “rule of law” is intentionally or unintentionally misrepresented with the changing political situation and policy adjustment by the CCP. On January 7, 2015, for example, *People’s Daily* ran an article entitled “Our rule of law cannot travel the same road as the West’s ‘judicial independence’” (Zhang 2015). It was written by Zhang Chunxian (张春贤), a member of the Party Politburo, and was reprinted and re-posted by almost all major media outlets and online news aggregators in China. This CCP senior official asserted that “the fundamental point of Chinese rule of law that differs from Western so-called ‘constitutionalism’ is to uphold the Party’s leadership” (*ibid*). He actually implied that the Party is above the law, which, of course, contradicts the general understanding of the rule of law according to which equality before the law and all people are subject to the same laws of justice. In the words of Yu Keping (2014, 2-3), the director of the Centre for Chinese Governance at Peking University and deputy director of the Central Compilation and Translations Bureau of the Central Committee of the CCP:

The basic meaning of the rule of law is: the Constitution and law are the paramount criterion and the highest authority of the state governance; any organization and individual must act within the framework of the Constitution and law; both officials and citizens must do everything in accordance with the law; everybody is equal before the law.

In order to clarify the confusion between the rule of law and rule of man in theory and practice, and differentiate the rule of law from the rule of man, Cheng (2013, 5), another Chinese scholar has even explicitly suggested:

Any mode of governance in which legal authority above individual will is the rule of law, whereas any mode of governance in which legal authority is subject to individual will is the rule of man.

It becomes clear that the universal meaning and fundamental principle of the rule of law is that everybody is equal before the law and no one or any organization is above the law. This assertion about the rule of law is supposed to apply to any society or state. To



put it another way, any explanation or interpretation about the rule of law that denies this fundamental principle and puts someone or some organizations above the law cannot be called the rule of law in terms of the general understanding of this concept. The discourse of “the rule of law with Chinese characteristics” deliberately misrepresents this principle by setting up a precondition of the rule of law, i.e., “to uphold the Party’s leadership”. This is almost the synonym of the rule of man because “legal authority is subject to individual will” (*ibid*) in this discourse.

On the other hand, although the CCP claims that the rule of law in China is the rule of law with Chinese characteristics, it at least recognizes its positive role in advancing economic reform and governing the society in the Party Charter, the Constitution and administrative regulations, which leaves room for civil society to use the rule of law discourse to hold the government accountable.

In 1997, for instance, the 15th National Congress of the CCP decided to “build a socialist country under the rule of law” (Jiang 1997). In 1999, the Amendment to the Constitution proclaims that “the state exercises the rule of law and builds a socialist country under the rule of law”. In 2004, the State Council issued the Outline for Promoting Law-based Administration in an All-round Way, in which it called for government organs to “administer according to law” and “to establish the government ruled by law” (State Council 2004). Consequently, a series of efforts have been made to develop the rule of law manifested in the following three respects: drawing up laws and regulations, enhancing the judicial system, and developing the legal profession.

First of all, an apparent achievement is the mushrooming of national and local legislation in terms of its quantity. As of the end of 2014, the Standing Committee of the NPC had enacted 242 effective laws besides the Constitution, the State Council had made 739 administrative regulations (“China Law Society” 2014). In addition, local people’s congresses and their standing committees had issued over 8,600 local regulations (Information Office 2012, 532). In such a setting, the authorities asserted that “a socialist system of laws with Chinese characteristics has been solidly put into place” (*ibid*). Meanwhile, China began to engage in the international human rights regime by signing the International Covenant on Economic, Social and Cultural Rights in October 1997

and ratifying it in February 2001, as well as signing the International Covenant on Civil and Political Rights in October 1998, but has not yet ratified it as of this writing.

Of course, measuring the current situation of the rule of law in a country cannot merely look at how many laws and administrative regulations that the authorities made because the mere enactment of laws is not equivalent to their enforcement. It is commonly agreed that there is a significant difference between law and reality in China. Moreover, issuing these laws on the part of the CCP may not primarily aim at protecting citizens' rights, but focus more on the improvement of its governing ability as Li (2010, 111) has pointed out:

[...] the priority of this system is to strengthen the government's governing capacity rather than monitor and check its power. Its main goal is to promote compliance through the use of administrative agencies with substantive laws rather than to establish procedural safeguards for individuals.

Nevertheless, these laws and administrative regulations still provide citizens with legal grounds and justification to confront rights violators in the court. As for PIL practitioners, such legislation as the Administrative Litigation Law, the Civil Procedure Law, Law on the Protection of Consumer Rights and Interests, the State Compensation Law, the Administrative Penalties Law, the Administrative Reconsideration Law, and the Regulations on Open Government Information, are specifically important, because they have not only regulated government behaviour and imposed procedural requirements on government acts, but also created "a starting point for the further use of laws to check government power" (*ibid*, 110).

Second, the Chinese judiciary has played an increasingly significant part in dispute resolution since the late 1970s, which can be confirmed in the annually growing number of cases presented to the courts. According to official statistics, the number of first trial cases accepted by courts during the last three decades increased by about 19.8 times from 447,755 in 1978 to 8,876,733 in 2013 ("first trial cases", 2014). Likewise, the growing public interest lawsuits have reflected this trend. This astonishing growth rate underscores the fact that the role of the judiciary has been acknowledged by both the state and civil society.

Of course, this does not mean that the Chinese judiciary has turned out to be fair, autonomous and effective. Conversely, some intrinsic and visible deficiencies such as “judicial injustice, low efficiency, corruption and political interference in judicial process” (Li 2008) are so pervasive in the system that Chinese leader Xi Jinping pledged to promote judicial openness, guarantee the independent and impartial exercise of adjudicative power and the improvement of its function mechanism at the Third Plenum of the 18th Central Committee of the CCP (Liu 2013). In spite of these defects and shortcomings of the judicial system, it has to be admitted that it has at least delivered “justice in ordinary cases and upholding the rule of law in certain areas” (Fu 2011, 354).

Third, the legal profession that PIL relies highly on has grown considerably over the years. The number of lawyers increased from a few thousand in the early 1980s to 271,000 at the end of 2014, and the number of law firms reached 22,000 at the same year (China Law Society 2014). In 2014, lawyers throughout the country handled 2.83 million different lawsuits (*ibid*).

In addition, Article 2 of the Law on Lawyers, which passed in May 1996 and entered into force in January 1997, defines the term “lawyer” as “a practitioner who has acquired a lawyer’s practice certificate pursuant to law and who, upon being entrusted or appointed, provides legal services to concerned parties” (as for the discussion of legal status and role of lawyers in China, see Huo 2010, 251-299; Lan 2010, 208-217). This provision that clarifies the legal status of lawyers by separating the legal profession from government entities grants lawyers more autonomy and may encourage more of them to engage in litigation for the public good (Fu & Cullen 2009, 7).

To be sure, Chinese lawyers are still subject to some professional restrictions, especially when involving a few cases assumed to be politically sensitive, and they even have to run political and professional career risks at times as mentioned earlier. Seen from another perspective, however, it also signifies that Chinese lawyers are now more courageous to stand up for social justice and human rights.

It is worth to note that Chinese leadership still deems the law as an instrument, and regards the rule of law as rule by law rather than wholeheartedly embraces the rule of law (Jiang (2010, 71-72). It is this way of thinking that the judiciary has always been re-

quired to take on various political tasks. For example, it was required to escort economic reform in 1980s; it was asked to serve for establishing market economy in 1990s; and it is demanded to become a significant instrument to build a harmonious society in entering into 21st century (Yu 2010; Yang 2015, 206). In this situation, the Chinese judiciary is difficult to independently perform its duty. Of course, on the whole, the enhancement of legislation, judiciary, and the legal profession is an encouraging development towards the rule of law, because it has created legal opportunities that were earlier unavailable to citizens for using the rule of law discourse to advance their rights. As Ho (2008, 10) put it:

[...] despite the fact that the Chinese Communist Party still rules supremely, many social areas that were closed off from political activities have gradually become accessible for citizens, including labour issues, poverty alleviation, and legal protection.

In brief, while there are still many sensitive social issues and topics that are not supposed to touch at the moment, some other social issues and topics that do not directly challenge the legitimacy of the CCP as Ho has suggested are allowed to access and tolerated. It is under such circumstances that PIL can survive.

### **1.2.3 Increasing Legal and Rights Consciousness**

The third factor contributing to the development of PIL comes from the increasing legal and rights consciousness among the Chinese populace, which is also connected with the legal and judicial development in recent decades discussed above.

The legal or rights consciousness, according to McCann (1994, 7) whose research focuses on rights-based struggles for social justice, is “the ongoing, dynamic process of constructing one’s understanding of, and relationship to, the social world through the use of legal conventions and discourses”. In other words, legal or rights consciousness refers to how people look at law and rights as well as how they mobilize the law for their rights in social relations. This legal and rights consciousness makes citizens aware that they possess some inalienable “rights” enshrined in law. As a matter of fact, the

development of legal and rights consciousness is also dependent upon the development of the rule of law.

As already noted above, from when the CCP assumed power in 1949 until the late 1970s, it virtually destroyed the entire legal system under the slogan of class struggle (Cai & Wang 2010; Li 2010). As a consequence, ordinary people could hardly develop legal and rights consciousness, nor could they legally sue the government concerning rights violations. In the reform era since the 1980s, Chinese citizens' legal and rights consciousness has been on the rise due to economic, social and legal development as well as legal education. Ironically, the officially-initiated legal education campaign (*pufa jiaoyu yundong* 普法教育运动) has played an important part in promoting legal and rights consciousness among the Chinese populace even if this might not be the original intention of the authorities (Xu 2011).

In November 1985, the Standing Committee of the National People's Congress passed "The Resolution on Acquainting Citizens with Rudimentary Knowledge of the Law" at the 13<sup>th</sup> session of the sixth NPC Congress, which (Standing Committee 1985) proclaims:

In the interest of developing socialist democracy and improving the socialist legal system, it is necessary to place the law in the hands of the masses of people so that they will know what the law is, abide by the law, acquire a sense of legality and learn to use the law as a weapon against all acts committed in violation of the Constitution and law.

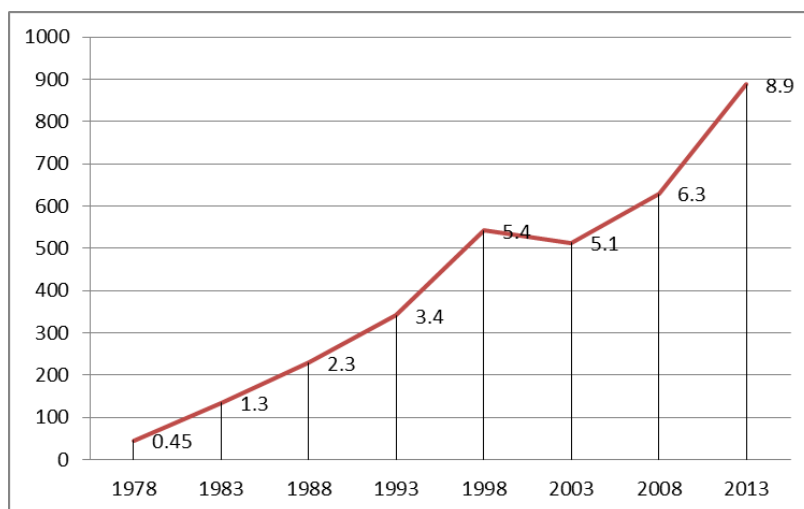
This resolution kicked off a large-scale legal education campaign throughout the country. Chinese citizens from all walks of life including students, workers, peasants, civil servants and teachers are required to learn legal knowledge (Xu 2011). According to statistics, between 1986 and 1990, there were 700 million citizens who learned rudimentary legal knowledge; between 2001 and 2005, rule of law-related education covered 850 million citizens (Li 2010, 18). Albeit the fact that the legal education campaign, primarily aimed at educating people to obey the law and the government rather than informing them of their social and political rights (*ibid*), it, in all sorts of forms

such as news reports, TV and radio talk shows, brochures and community lectures, has indeed disseminated law-related knowledge and information to the public. As a result, more ordinary citizens have become conscious of rights they did not exactly know in the past.

Of course, the awakening of legal and rights consciousness cannot be simply attributable to a single factor, it has benefited from multiple factors such as economic development, better education, increasing social pluralism, more social and spatial mobility, and the spread of internet technology. Broadly speaking, under the “weaker” post-totalitarianism in relation to totalitarianism (Thompson 2002, 83), Chinese citizens have become more aware and assertive of their rights in a way that they have never been before.

**Figure 1.6: First Trial Cases Accepted by Courts 1978-2013**

(Unit = million)



Source: Drawn by the author on the basis of the data from *China Statistical Yearbook 2014*, p. 775.

The increasingly raised legal and rights consciousness can also be confirmed in Figure 1.6 above, which illustrates the drastic increase in the first trial cases accepted by courts between 1978 and 2013. As we can see, almost every five years from 1978 to 1993, the first trial cases increased by around 1 million, and by about 2 million between 1993 and

1998, and again between 2008 and 2013. This upward trend indicates that aggrieved citizens have increasingly stood up for their legitimate rights through law. The enormous increase of the first trial administrative cases illustrated in Figure 1.5 also reflects the rising legal and rights consciousness. Given the momentum of cases growth, the idea of resolving disputes by way of the law and courts has been widely recognized by Chinese citizens, which has also fostered the rapid development of PIL.

As a matter of fact, there is a natural and close correlation between rights consciousness and citizen resistance in the form of PIL. It is clear that once people are aware of their legitimate rights that they are supposed to possess but have not yet enjoyed in reality, they will surely do their best to strive for these rights if they have opportunities. As Minxin Pei (2000, 40) has remarked:

Democratic resistance in China may be better understood as part of a broad trend of increasing rights consciousness among ordinary people. Such resistance is likely to occur more frequently and intensely and gain greater, although not necessarily overt or direct, popular support when the general level of rights consciousness is on the rise.

Summing up, it is this increasingly raised legal and rights consciousness that emboldens Chinese citizens to be courageous to claim and defend their rights and interests by making use of legal instrument like PIL.

#### **1.2.4 The Compromise between Stability Maintenance and Rights Protection**

The fourth factor that has given rise to PIL can be called the compromise between preserving social stability claimed by the Party and protecting legitimate rights initiated by civil society. In fact, in the wake of the Tiananmen Democracy Movement in 1989, “stability maintenance” (*weiwen* 维稳) and “rights protection” (*weiquan* 维权) have become two key words that can be used to interpret current social and political issues, and to understand social contradiction and conflict in China.

On the one hand, preserving social stability has become a political discourse and strategy for the party-state to control civil society and maintain its one-party rule. Since the

early 1980s, the CCP leadership from Deng Xiaoping (邓小平), Jiang Zemin (江泽民) and Hu Jintao (胡锦涛) to Xi Jinping (习近平) has consistently reiterated social stability illustrated in such slogans as “Stability overrides everything” (稳定压倒一切), “Nipping every element of instability in the bud” (把一切不稳定因素消灭在萌芽状态), “Stability is the non-negotiable task” (稳定是硬任务), and “Maintaining social stability is the basic task of the country’s political and legal work” (维护社会大局稳定是政法工作的基本任务).

Under this discourse and policy, the authorities even identify legitimate demands for political reform and democracy as well as reasonable grievances and complaints as a threat to social stability, for which it has established Stability Preservation Offices (*weiwenban* 维稳办) at various levels from the centre, provinces, prefectures, cities and counties all the way to streets, townships, and even state-owned enterprises in order to oversee society or citizens (Feng 2013). In this situation, any complaints, criticisms and protests might arouse the Party’s stability concern and overreaction, which unavoidably leaves little space for civil society activities related to rights claims and rights protection. Obviously, if some complaints, criticisms, lawsuits or any other civil society activities are deemed to threaten social stability in the view of the Party, they can barely be addressed just on the law level. As Trevaskes, *et al.* (2014, 2) have observed:

The stability imperative has compelled the party-state to re-frame legal and justice practices in a way that in many respects runs counter to the Party’s own principle of “governing the country according to the law” [quotation marks in original].

On the other hand, rights protection is the popular discourse and strategy for civil society to resist rights violators which are mostly the government and state-owned monopolies. In the face of their violated rights and interests, aggrieved citizens have increasingly adopted a variety of legal and extra legal means such as litigation, demonstrations, petitions, strikes, sit-ins, collective walks, and blockades to defend their legal rights. This watchword, so to speak, has deep resonances with the public nowadays, because anyone in a rule-of-man society may unanticipatedly encounter rights violations but have nowhere to seek justice.



In this setting, stability maintenance and rights protection seem to have become an insurmountable contradiction. The Party and vested interests put their interests before the people and even grab the wealth of society through either direct or indirect benefits transfer policies, which inevitably leads to rights violation and citizen resistance. Consequently, the Party has to do its utmost to preserve so-called social stability, i.e., suppressing growing rights protection activities. At the same time, ordinary citizens are increasingly bold in standing up for their rights set down in law, which also unavoidably conflicts with the Party's interests and may lead to suppression and resistance. In this bargaining process, PIL becomes a social response or adaptation to this insoluble cycle of stability maintenance and rights protection that can be accepted by both sides.

To the party-state, PIL is perhaps a moderate and self-contained legal action that can be controlled within the boundaries. Due to growing social tensions and conflicts, the primary concern of the Party is to maintain social stability for which it surely hopes aggrieved individuals will make their complaints and grievances through its judicial channel instead of taking to the streets. In the words of Cai (2008c, 109):

[...] the central party-state's concern over social stability and regime legitimacy can be an important driving force behind efforts to strengthen the mechanisms of conflict resolution.

Hence, the CCP acquiesces in PIL and has eventually acknowledged its legitimacy by adding a PIL clause to the amended Civil Procedure Law (CPL) in August 2012, which allows government agencies and concerned organizations to sue for the public good in relation to environmental pollution and consumer rights (Article 55 of the CPL). Although this legislation which confines subjects of litigation to government agencies and concerned organizations does not meet the expectation of PIL proponents (Huang 2014), it has still grants PIL practitioners more legitimacy to take rights violators to the court.

To civil society, PIL is an institutional channel recognized by the authorities, which means that those engaging in PIL have some room for their rights claims without carrying political and career risks. Moreover, PIL has a certain influence in society because it is above litigants' individual interests, which would help solicit media and public atten-

tion, and promote dispute resolution. In addition, compared to ineffective administrative channels such as petitioning (*xinfang* 信访, for detailed description of *xinfang* system, see Yu 2005; Chen 2008), seeking a court ruling to resolve disputes is more transparent (Fu 2011, 353-354), as there are numerous legislation specifying government behaviour and litigation procedure. Therefore, it is not so difficult for citizens to find legal arguments to take those who have violated their rights to the courts. As one interviewed lawyer put it:

If it is possible, I prefer to address dispute through the administrative channel, which is more effective if the government wants to solve a problem because of its huge power and resources. The problem is, you know, in most situations, it just adopts stalling tactics, hoping the problem will disappear as time goes by. Moreover, we are blind about how it deals with the issue brought to it as everything is in a black box. But if going to court, we are in a better position to argue with our opponents because all laws and regulations are on the table (IC21).

To summarize, PIL is, so to speak, a sort of compromise result accepted by the Party which is keen to preserve social stability, and by civil society which is longing for rights protection. On the one hand, the harsh political situation restricting Chinese citizens' capability of using political mobilization for their cause compels them to turn to some alternative channels like PIL to resist rights violations. On the other hand, the authorities tolerate PIL, regarding it as one of channels to alleviate public grievances and mitigate social contradictions (Fu & Cullen 2011; Lu 2008). In this setting, PIL practitioners have found some room in PIL, which will be further discussed in Chapter 4.

### **1.3 The Legal Basis for PIL**

Broadly speaking, PIL is still relatively new to China's judicial system. It is not a commonly used term in official documents, nor had it received legislative endorsement until August 2012, when the Civil Procedure Law was amended to increase a PIL clause as discussed below. Thus, a question naturally emerges: does it have legal basis or can

current legislation be interpreted as providing it with some favourable arguments? Obviously, PIL must be based on legal grounds as a legal action.

### 1.3.1 Restricted to Procedural Obstacle

Examining laws and administrative regulations, the major barrier for PIL is the standing restriction on those who try to file lawsuits with a public interest nature. Article 119 of the Civil Procedure Law specifies: “the plaintiff must be a citizen, legal person or other organization with direct interests in a case.” Article 41 of the Administrative Litigation Law also stipulates: “the applicant shall be a citizen, legal person or other organization which considers that a specific administrative act has infringed his or her lawful rights and interests.”

In terms of the “direct interests in the case”, the precondition to file a lawsuit in the court is that a litigant must have directly suffered harm caused by the person, organization or government that he or she attempts to sue. Those who do not directly suffer harm in a case cannot establish the litigation standing. In other words, just suing for the public interest cannot be recognized and accepted by the court. Of course, whether PIL litigants do have or do not have “direct interests in a case” sometimes relies on the court’s opinion at its discretion according to the case, situation and other elements. As the judiciary is generally conservative toward litigation applications with a public interest nature, as discussed in Chapter 4, PIL litigants in China often have to take legal action in the name of affected individual interests but actually for the public good to circumvent this procedural obstacle.

In the case of *Qiu Jiandong v. Post & Telecommunications Office* mentioned earlier, for instance, Mr. Qiu accused the defendant of infringing upon his individual interests by overcharging him, but this lawsuit also pertained to other consumers who were in the same situation as the plaintiff. In *Li Yan v. the Ministry of Education and Others* discussed more in Chapter 2, the claimant brought the defendants before the court for their refusal to provide her information as required by law, but her litigation was also conducive to promoting government information openness for the public interest. In fact, most PIL practitioners sued for public interest with this roundabout approach, otherwise they might have been excluded from the courtroom from the outset. A few of them even intentionally put themselves in a situation that qualified them to sue in the court. In the

case of *Huang Jinrong v. Beijing Railway Bureau* discussed in Chapter 2, the plaintiff deliberately purchased a railway ticket from Beijing to Yiwu City, Zhejiang Province to establish a correlation with the lawsuit he wanted to file. This is what Fu and Cullen (2009, 12) have described “advantage of allowing lawyers to tailor-make the case to fit in their purpose”.

### **1.3.2 The Fundamental Rights Granted by the Constitution**

Albeit the stringent requirements on the standing of plaintiffs engaging in PIL, the relevant stipulations of laws and administrative regulations also leave certain room that can be interpreted as being favourable to PIL practitioners. The first and foremost, the right to lodge PIL derives from the Constitution whose Article 2 explains the source of power as follows:

All power in the People’s Republic of China belongs to the people ... The people administer state affairs and manage economic, cultural, and social affairs through various channels and in various ways in accordance with the law.

In light of this Article, people are supposed to be the master in China. Article 41 further elucidates that citizens are entitled to participate in state management and monitor the government as well as to express their opinions and make complaints:

Citizens of the People’s Republic of China have the right to criticise and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty.

It should be noted that these provisions of the Constitution normally cannot be directly invoked to support claims in individual cases except for the case of *Qi Yuling* in which the Supreme People’s Court (SPC) made a judicial interpretation in July 2001, permitting citizens to cite the Constitution to defend their rights in the court (Supreme People’s Court 2001). Nevertheless, they have laid the legal foundation and provided the

general principle for other substantive laws and regulations under which citizens are allowed to get access to “various channels” and “various ways” for exercising their democratic rights, participating in public affairs and supervising government work in accordance with law. Therefore, PIL is not simply considered as a litigation instrument, but also a channel for public participation in some way.

### **1.3.3 Green Light to Sue the Government**

Second, the Administrative Litigation Law (ALL) passed in April 1989 and implemented in October 1990 put the government under the substantive law and permitted citizens to sue the government and its officials for the first time since the CCP came to power in 1949. Article 2 of the ALL enunciates:

Where citizens, legal persons or other organizations which consider that concrete administrative actions of an administrative authority or their personnel have infringed their lawful rights and interests, they shall have the right to institute proceedings in the people’s court in accordance with this law.

These “concrete administrative actions”, according to Article 54 of the ALL, may include seven types of violations caused by government agencies such as administrative actions based on (1) insufficient principal evidence; (2) incorrect application of law and regulations; (3) violation of statutory procedures; (4) exceeding legal authority; (5) abuse of power; (6) failure to perform or delay its legal responsibility; and (7) unfair administrative sanction. Under the ALL, government agencies or officials that are found to have abused of power, acted against legal administrative procedures, or have been guilty of administrative nonfeasance can be taken to courts. Nonetheless, the ALL does not permit the judiciary to review abstract administrative actions. Article 12 of the ALL specifies:

People’s court shall not hear suits involving the following matters brought by citizens and legal persons or other organizations; namely: (1) State actions involving national defence or diplomacy; (2) administrative laws and regulations or universally binding decisions or orders formulated and promulgated

by administrative authorities; (3) decisions of administrative authorities to reward, punish, appoint or dismiss personnel of administrative authorities; or (4) concrete administrative actions for which the law provides that final adjudication is to be conducted by administrative authorities.

According to this Article, the court is only empowered to assess whether laws, regulations and policies are well implemented rather than whether they are legal or illegal. Yet in many instances, it is some abstract administrative actions in the form of laws, regulations, policies and decisions that might negatively affect citizens' rights and interests. In spite of this flaw, it is still a significant breakthrough in Chinese jurisprudence because it regulates government conducts as well as expands individual standing to sue the government in the court. In terms of this important advance, the ALL has indisputably far-reaching impact on the development of rule of law, about which Minxin Pei (1997, 832) has made such comments:

The theoretical significance of this law can hardly be exaggerated because, if fully enforced, it would afford Chinese citizens an important legal instrument with which to defend themselves against the abuse of state power by government agencies and officials.

On the other hand, nonetheless, it is still not easy for ordinary people to sue government agencies and officials despite the fact that they have been granted such rights by the law, which will be further discussed later.

#### **1.3.4 PIL Recognized by Lawmakers**

Third, the Civil Procedure Law (CPL) enacted in April 1991 and amended in August 2012 permits joint litigation or group litigation that constitutes one of important features of PIL. Article 52 and Article 53 of the CPL stipulates respectively:

When one party or both parties consist of two or more persons, the subject matters of their litigations are the same or of the same category, and the people's court considers that, subject to

the consent of parties, the lawsuit can be tried as together, a joint litigation shall be constituted.

A joint lawsuit in which one party consists of numerous persons may be brought by representatives selected by and from the party. The act of litigation of such representatives shall be effective for all members of the party they represent.

As a considerable number of public interest cases regarding consumer fraud and environmental pollution concern collective lawsuits, these stipulations make way for this type of litigation on the law level. Of course, it is commonly acknowledged that a collective lawsuit is very difficult to be registered in the court because the party-state is wary of it leading to social instability (Tong & Bai 2005, 155-61).

Among all these laws and administrative regulations, the most significant hallmark of PIL is that the amended CPL, which was approved at the 28<sup>th</sup> session of the 11<sup>th</sup> NPC Standing Committee in August 2012, and took effect in January 2013, adds a PIL clause. Its Article 55 clearly states:

The government agencies and concerned organizations designated by law can bring lawsuits against those whose acts harm *public interest* like environmental pollution or infringement of consumers' legal rights and interests, etc. [emphasis added].

This is the first time that Chinese lawmakers have acknowledged PIL and granted government agencies and relevant social organizations' right to make a complaint for the public good. While there is some vagueness in this provision as to which organizations are allowed to sue and what procedures should be followed, this stipulation still signals a major step forward in terms of the development of PIL in China, because it not only recognizes the legal status of PIL, but also provides citizens with solid legal grounds to file lawsuits with a public interest nature. It is noted that individuals' right to sue for the public interest are excluded from this provision. Nonetheless, they can still sue for the public cause if they start with their personal interests as they have already been doing these years.

### 1.3.5 Consumer Rights Protection Emphasized

Fourth, the Law on the Protection of Consumer Rights and Interests (LPCRI) implemented in January 1994, and revised in 2009 and 2013 respectively, is closely tied to citizens' daily life, as it clearly enumerates some rights that consumers are entitled to have in purchasing commodities or enjoying services, including the right to information, the right to choose, the right to fair trade, the right to receive compensation, the right to organize social groups and the right to exercise supervision. For instance, Article 15 of the LPCRI articulates:

A consumer shall have the right to monitor the protection of consumers' rights and interests in work related to commodities and services. A consumer shall have the right to report or complain of acts infringing upon the rights and interests of consumers, and the unlawful or derelict acts of state authorities and personnel in the course of protecting the rights and interests of consumers. A consumer shall have the right to criticize and make suggestions for the protection of the rights and interests of consumers.

As consumer rights protection is related to commodity and service providers, Article 55 of the LPCRI specifies some punitive measures on them if they are in violation of the rights and interests of consumers:

Business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the compensations for victims' losses; the increased amount of the compensations shall be three times the costs the consumers paid for the commodities purchased or services received.

In the meantime, the LPCRI requires the government and judiciary to support consumers to protect their rights by means of social supervision and legal proceedings written down in Article 6 and 30 respectively as follows:



The State shall encourage and support all organizations and individuals to exercise social supervision over acts infringing upon consumers' rights and interests.

The people's courts shall adopt measures to facilitate consumers to take legal proceedings and must entertain and handle without delay cases of disputes over consumers' rights and interests that meet the conditions for a lawsuit specified in the Civil Procedure Law of the People's Republic of China.

These detailed and explicit stipulations provide consumers with legal arguments to protect their rights and encourage them to seek judicial redress through the law. This is one of significant reasons why the majority of public interest cases have occurred in the field of consumer rights protection.

### **1.3.6 Environmental Protection Encouraged**

Fifth, the Environmental Protection Law (EPL) implemented in December 1989 and amended in April 2014 grants the public a number of rights to participate in environmental governance, although these provisions are generally abstract without concrete specification, and a few are even more conservative.

For example, Article 6 of the EPL articulates: "All units and individuals shall have the obligation to protect the environment." Article 53 further prescribes: "Citizens, legal persons and other organizations shall have the right to obtain environmental information, participate and monitor the activities of environmental protection in accordance with law." Article 58 restricts litigation to merely social organizations by detailing the standing qualification as follows:

For activities that cause environmental pollution, ecological damage and *public interest* harm, social organizations that meet the following conditions may file litigation to the people's courts. (1) Have their registration at the civil affair departments of people's governments at or above municipal level with sub-districts in accordance with law; (2) Specialize

in environmental protection *public interest* activities for five consecutive years or more, and have no law violation records [emphasis added].

The increasingly worsening environmental situation as manifested in severely polluted air, water and land throughout the country has become one of the major problems that Chinese citizens are facing today. According to official statistics, of 161 cities monitored in the light of new air quality standards, only 16 cities were up to standard in 2013 (Ministry of Environmental Protection 2014). Under such circumstances, the EPL is important not only for encouraging the public to actively participate in environmental governance, but only for providing citizens with legal basis to confront environmental violators. Of course, it should be noted that the EPL is often ignored by local governments and even central government departments if it conflicts with the goal of the economic growth, which makes the EPL hardly be implemented forcefully.

### **1.3.7 Empowered to Obtain Government Information**

Last but not least, the Regulations on Open Government Information (OGI Regulations) enacted by the State Council in January 2007 and implemented in May 2008 is another noticeable and encouraging development in the direction of more transparent government and the rule of law, as it empowers citizens with the right to lawfully obtain government information that was formerly regarded as state secret or internal information under the traditional socialist governance ideology.

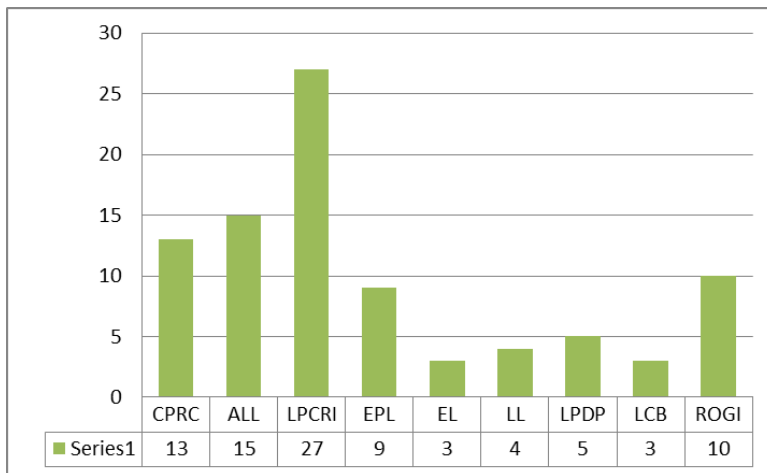
With regard to government information, according to Article 1 of the OGI Regulations, it refers to “the information recorded and kept in a certain form by the administrative organs which made and obtained in the course of performing their duties”. Article 13 and 33 provide detailed explanations as to how to obtain government information and how to file a lawsuit relevant to it:

Citizens, legal persons or other organizations may, based on the special needs of such matters as their own production, livelihood, scientific and technological research, also file requests with departments of the State Council, local people’s governments at all levels and departments under local people’s gov-

ernments at the county level and above to obtain relevant government information.

Citizens, legal persons or other organizations that feel specific administrative act of administrative agencies in the work of government information disclosure has violated their legitimate rights and interests may request administrative reconsideration or file an administrative lawsuit in accordance with the law.

**Figure 1.7: Frequently Invoked Laws and Regulations in PIL 1996-2012**



Note:

- Figure 1.7 enumerates legislation that was invoked at least three times in PIL cases. It is noted that there are some overlaps in citing laws. For instance, some litigants simultaneously cited the Constitution and the Education Law or the LPCRI and the OGI Regulations in their lawsuits.
- CPRC: The Constitution of the People’s Republic of China  
 ALL: The Administrative Litigation Law  
 LPCRI: The Law on the Protection of Consumer Rights and Interests  
 EPL: The Environmental Protection Law  
 EL: The Education Law  
 LL: The Labour Law  
 LPDP: The Law on the Protection of Disabled Persons  
 LCB: The Law on Commercial Banks  
 ROGI: The Regulations on Open Government Information

Under the OGI Regulations, the government which is required to timely and voluntarily disclose its information concerning citizens’ life and work is viewed as its legal obligation instead of its privilege. Its Article 10 enumerates a wide array of government in-

formation that is supposed to be open to the public, including administrative regulations, national economy and social development statistics, government budget and spending, public health, food and medicine safety, and air quality. It is beyond doubt that if the OGI Regulations are effectively put into place, it will, to a large extent, guarantee citizens' right to information, regulate government conduct, and improve administrative governance. As for PIL proponents, the OGI Regulations have provided them with a potent lever to check the government work and hold it accountable for its decisions and policies.

In addition to this legislation above, there are some other laws and regulations that can be invoked to buttress legal arguments in PIL, which include the State Compensation Law enacted in 1994, the Labour Law in 1995, the Education Law in 1995, the Law on Commercial Banks, the Price Law in 1998, the Law on the Administrative Permission in 2004, the Law on the Protection of Disabled Persons in 2008, and the Food Safety Law in 2009, to name but a few. Figure 1.7 above displays some frequently invoked laws and administrative regulations by PIL practitioners in their lawsuits.

Of course, we have to admit that current Chinese laws and administrative regulations are still not enough to protect citizens' rights, but all these laws and regulations cited above have at least enumerated many rights that citizens are supposed to have, which will surely affect their perception of these rights that have long been ignored. At the same time, they have provided either explicit or implicit legal grounds for PIL practitioners to further their rights claims and fight against rights violations in the court. In the words of Minxin Pei (2004, 26):

Despite the limited nature of the improvement in the expansion and protection of rights, the enumeration of legal rights and promulgation of public policies have provided Chinese citizens with important instruments of resistance against the government and its agents.

Based on these laws and administrative regulations, public-minded citizens and CSOs now have more legal opportunities and legal arguments to stand up for their legitimate rights and pursue their ends through the law and judicial process.

## 1.4 Concluding Remarks

This chapter presents an overall picture of PIL in China, including its emergence and evolution, the composition of PIL participants and the motives of PIL litigants, and the main targets of this legal action. It also discusses four contextual factors driving this grassroots legal action and examines a range of legislation that can be interpreted in favour of PIL and its practitioners. These discussions bring us to the following three conclusions.

First, widespread citizen involvement in PIL is a clear signal that Chinese people no longer tolerate blatant social injustice after having experienced over thirty years of reform and opening up to the world. Since becoming more conscious of their civil, economic, social and political rights laid down in law, ordinary citizens from diverse background with urbanites at the forefront are actively engaging in this legal action aimed at irresponsible or unresponsive government agencies and arrogant vested interests. In a sense, PIL is more of indicative of citizen resistance to the state than merely a type of litigation for rights claims.

Second, PIL did not appear accidently in the mid-1990s. Rather, it is the result of a set of conjunctive factors, including the growing public demand for social justice, a relatively workable legal framework, increasing legal and rights consciousness, and compromise between preserving social stability by the Party and promoting rights protection by civil society. By and large, the policy adjustment in social governance, the re-establishment of legal system, the rapid economic growth, and increasing social pluralism since the late 1970s have prepared the seed-bed for Chinese citizens to stand up for their rights in the courts by means of PIL.

Third, as a law-based citizen action, PIL practitioners must base their rights claims on the law as an interviewed law scholar remarked: "PIL is a legal movement rather than a street movement, which means that we must address disputes using the law." (IC1) Over the past 30 years, Chinese authorities enacted comprehensive laws and administrative regulations, which have laid the indispensable legal basis for citizen legal action in a post-totalitarian setting. Consequently, PIL proponents have made the most of these

laws and regulations to advance their rights and make their voices heard, which will be elaborated in the following chapter.

In sum, the changes of economic, social and legal environment over the years have set a stage for this spontaneous and popular citizen legal action in which PIL has not only reflected the willingness and strategy of Chinese citizens to struggle for social justice, rights protection and the rule of law, but also become one of the significant and available channels for civil society to push back against rights violations and promote social change under a restrictive political environment.

## Chapter 2

### Citizen Legal Action for Rights Claims

Whereas the party-state uses the law as a way to bolster its ruling capacity and reassert its domination, an increasing number of citizens, encouraged by activist legal professionals, have resorted to law to advance their rights and curb political and economic power.

— Chloe Froissart (2014, 1)

As discussed in preceding chapter, China has by now produced large quantities of laws and administrative regulations that grant citizens a considerable amount of rights and specify corresponding judicial procedures that citizens can follow if they wish to make complaints in the courts. This is an encouraging development toward the rule of law in China which for a long time has lacked a credible legal structure. Nonetheless, the effective and impartial implementation of these laws and regulations remains a problem, which leads to that some of those rights cannot be fully realized in reality.

While discussing the phenomenon of attaching importance to legislation but neglecting enforcement in China, Stanley Lubman (2003, 26), a Chinese legal studies scholar, commented it as early as in 2003: “The laws grow in numbers, but the effectiveness with which they are enforced has not grown apace.” Another scholar (Li 2010, 31) also pointed out: “China was promising a lot, but had delivered little.” It is this huge gap between laws promised and laws implemented that provides legal opportunities that PIL litigants can exploit to advance their cause.

It is apparent that in the reform era in which economy has developed fast but political participation has been highly restricted, PIL has become “the new battlefield between state and society” (Froissart 2014, 1). Both the party-state and civil society are trying to employ the rule of law discourse to justify their claims and actions. The Party uses the

law as a tool to serve its political and legal ends, whereas civil society also utilizes the law to fight against rights violations and seek social justice. In a sense, as Rudolf von Jhering (1915, 2) argues: “Law is an uninterrupted labour, and not of the state power only, but of the entire people.” In other words, law can be used by both the government and citizens for their respective goals — in the Chinese context here — stability maintenance and rights protection.

This chapter focuses on exemplifying how PIL practitioners have made use of the law and judicial system to claim their rights and expand social justice through a number of high-profile lawsuits. It pays particular attention to the following four aspects in which PIL litigants have been vigorously engaged.

First, PIL practitioners tried to make the government abide by law through initiating a series of lawsuits, which included *Li Gang v. the National Committee for Oral Health, and Others* (case 37), *Li Yan v. the Ministry of Education and Others* (case 54), and *Liu Yanfeng v. Shaanxi Provincial Department of Finance and Another* (case 82). Second, they challenged state-owned monopolies which were considered in violation of the law through the three cases of *Qiao Zhanxiang v. the Ministry of Railways* (case 5), *Huang Jinrong v. Beijing Railway Bureau* (case 31), and *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China* (case 21). Third, PIL litigants called for equal access to opportunities and rights by lodging such cases as *Jiang Yan and Others v. the Ministry of Education* (case 6), and *Huang Yuanjian v. the National Grand Theatre*. Fourth, they struggled for a cleaner and more liveable environment by accusing environmental violators exemplified by *All-China Environment Federation and Another v. Dingpa Paper Mill* (case 49), and *Chen Faqing v. Yuhang District Environmental Protection Bureau* (case 9).

## **2.1 Making the Government Abide by Law**

With reference to the rule of law as discussed in the preceding chapter, the fundamental principle is that the equality before the law under which all people are subject to the same laws of justice. This principle is also recognized by the Chinese Constitution which expressly states in Article 5 as follows:



All state organs, armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and laws. All acts in violation of the Constitution and laws must be investigated. No organization or individual is privileged to be beyond the Constitution or laws.

This clause of the Constitution explicitly elucidates the principle and spirit of the rule of law, i.e., equality before the law under which no one or organization is above the law. Nonetheless, the party-state, even though it acknowledges the importance of the rule of law, consistently urges citizens' obedience to the authorities rather than restricts on its own unbounded power (Li 2010, 34), which unavoidably leads to pervasive corruption and abuse of power. In fact, this is also a feature of post-totalitarianism as Tucker (2005, 27) has noted:

Post-totalitarian decentralization unleashes corruption ... The bureaucracy has a vested interest in avoiding accountability, performance review, transparency and a clear definition of its role to maintain its discretionary powers.

On the other hand, in the post-totalitarian setting, civil society has some room to make use of the rule of law discourse to counter the party-state. Therefore, Chinese citizens are anxious to keep the government in check by alleging that they have the right empowered by the Constitution to monitor government work and officials. In recent years, PIL practitioners have increasingly been calling for government accountability, transparency and responsiveness as exemplified in the following cases.

### **2.1.1 Compelling the Government to Fulfil its Duty**

The government is supposed to carry out its duty to supervise its subordinate units and regulate the market to keep fair competition and protect consumers' rights and interests. However, it is government inaction and negligence in many cases that lead to a number of social problems that ordinary people are concerned such as food safety, commercial fraud, and environmental pollution. Therefore, public-minded citizens have frequently taken those irresponsible and unresponsive administrative agencies to the courts. An example is the case of *Li Gang v. the National Committee for Oral Health, and Others*

(case 37; Zhang 2007) in 2005 in which the plaintiff did everything possible to compel irresponsible government watchdogs to investigate a questionable institution involving illegal business.

Li Gang (李刚), a law scholar who suspected the National Committee for Oral Health (NCOH), a national professional association under the Ministry of Health (MOH),<sup>7</sup> of being involved in power-for-money business, requested the National Certification and Accreditation Administration (NCAA), the watchdog in this field, to check whether NCOH was qualified to endorse dental hygiene products, but received no reply. Therefore, he brought NCOH before Beijing No.1 Intermediate People's Court for alleged administrative nonfeasance. The court did not accept his litigation application on the grounds that his claim fell under the category of "letters and visits system" instead of administrative litigation.

In order to be qualified to take legal action, Mr. Li purchased a bottle of Lotte xylitol chewing gum with the NCOH certification logo on it at the Beijing Wumei Shopping Mall. He then sued NCOH, the Lotte (China) Food Co., Ltd. (Lotte) and Beijing Jiahe Wumei Commercial Co., Ltd. (Wumei) in Beijing Chaoyang District People's Court. He claimed that the logo "Certified by NCOH" on the package of the chewing gums produced by Lotte was commercial fraud aimed at misleading consumers, because NCOH might not be authorized to endorse dental hygiene products. He also tried to add the MOH as co-defendant, but was denied.

The court eventually made a ruling favourable to Mr. Li, holding that Lotte had misled the plaintiff by using a questionable certification logo. Wumei, as a professional retailer, failed to examine the authority of its commodity supplier. Hence, they were ordered to refund ¥8.90 (€1.26) to the plaintiff, the amount he had paid for the chewing gum. The court also sent out a judicial proposal to NCAA and MOH, suggesting that they investigate whether NCOH was qualified to issue certificates in the field. Soon afterwards, NCAA and MOH announced that they would make an investigation of NCOH, and then dismantled it.

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<sup>7</sup> The Ministry of Health was renamed the National Health and Family Planning Commission in March 2013.

The dispute in this lawsuit concerned two issues. The first was whether NCOH was qualified to endorse dental hygiene products. The NCOH which was established in 1988 by MOH claimed that it was dedicated to taking precautions against dental disease and disseminating knowledge related to public dental hygiene, for which it enjoyed the authority in the field. Nonetheless, it had been making use of this privilege to endorse dental hygiene products including toothpaste and chewing gum in exchange for money since 1992, although it was not authorized to do so. In the meantime, the producers of dental hygiene articles that were permitted to use its certification mark on their products package made unjust profits by taking advantage of consumers' trust in the government-backed institution.

The second issue involved in this case referred to administrative nonfeasance. Given that NCOH had already been engaged in this power-for-money business for over ten years by the time this litigation occurred, it was conspicuous that concerned government watchdogs had failed to perform their duty to supervise their subordinate institution. Therefore, this lawsuit showcased the shoddy management and supervision over the endorsement of dental hygiene products on the part of the government. In the view of the plaintiff, if the NCOH had engaged in business that it was not qualified to do, it was categorically illegal for which concerned government agencies should be held responsible. However, neither NCAA nor MOH admitted their administrative inaction leading to this scandal in spite of the fact that they were compelled to investigate the NCOH.

By and large, this litigation was successful on the part of the plaintiff because of the facts that the two companies producing and selling the chewing gum with the NCOH logo lost the case; consumers' rights and interests in this respect were protected; relevant government agencies were forced to investigate the business of the NCOH; and the NCOH was eventually dismantled.

### **2.1.2 Pushing for Government Information Disclosure**

The government information openness is increasingly significant in modern society as it is related to government transparency, good governance and public participation. Thus, it is considered by some scholars one of basic rights of citizens today (Hou 2016, 527-566). According to relevant figures, until August 30, 2015, there are 103 sovereign countries in the world issuing legislation regarding government information openness

(*ibid*, 1). The principle of government information openness is also acknowledged and written down in the OGI Regulations in China, which stipulate that citizens have the right to know about government information relevant to their life and work. Yet it is a perennial issue in China that has long been viewed as a major contributor to public dissatisfaction, because most government information, be it at local, regional or national level, is usually classified as confidential or internal information. As an editorial in *Southern Metropolis Daily* (“susong daobi” 2012) comments:

Many government agencies expand the confidential scope of government documents at their discretion. They often either refuse to open government information at the excuse of involving state secret or present it in a selective and vague way. In fact, as the government information concerns citizens’ interests and public participation, it should be open to the public in accordance with law.

In effect, the information non-disclosure attitude and situation have not only blocked citizens from getting access to government information, and monitoring government work and government officials, but also led to painful repercussions at times. A striking example was the SARS (severe acute respiratory syndrome) incident that claimed the lives of 813 people (Malave & Elamin 2010). When initial cases of SARS appeared in Southern China in late 2002, the authorities covered up relevant information, which caused the rapid spread of the epidemic in dozens of countries around the world in short span of time. Consequently, more and more citizens in recent years have been aware of the importance of this issue and invoked the OGI Regulations to promote government information openness. The case of *Li Yan v. the Ministry of Education and Others* (case 54; Ye 2011; Guo 2011) is such an example.

Li Yan (李燕), a second-year graduate student from the Law School of Tsinghua University, brought the Ministry of Education (MOE), the Ministry of Science and Technology (MST), and the Ministry of Land and Resources (MLR) before Beijing No.1 Intermediate People’s Court for their infringement of her right to information in September 2011.

At that point, Li Yan was writing her Master's thesis on the division of work and the scope of duties among vice ministers in central government departments, for which she needed to collect relevant information, but failed to find it in publications and official websites. Thus, she submitted written requests for government information openness to 14 ministerial-level agencies in May 2011 under the OGI Regulations. During the following four months, she obtained the information from most of these agencies through her unremitting efforts except for those three departments mentioned above. The MOE rejected her application, saying the requested information was its internal information, which was irrelevant to her needs. The MST dismissed her request three times on the grounds that the duties of vice ministers are constantly adjusted with changing work, and the MLR told her that the information had been posted on its webpage, but it was nowhere to be found when she searched for it. Hence, Li Yan requested the court to order the defendants to implement their obligation to disclose the information required by the OGI Regulations. The court did not formally hear the case, but mediated between the two sides to reach a settlement. After the defendants had provided her with the requested information, Li Yan withdrew the lawsuit.

This is an illustrative example of a batch of similar lawsuits in which public-spirited citizens tried to gain access to government information by invoking the OGI Regulations. The legal evidence that the plaintiff presented to the court in this case was indisputable because the requested information about the division of work and the area of responsibility among vice ministers meets the conditions of Article 9 of the OGI Regulations, which expressly specifies:

The Administration shall voluntarily disclose government information that meets one of the following basic requirements: (1) involving citizens, legal persons and other organizations' vital interests; (2) requiring broad public awareness and participation; (3) reflecting institutional setup, functions, procedures and other conditions of administrative organs; and (4) other items in accordance with laws, regulations and concerned state legislations.

In light of this provision, government information about “institutional setup, functions, procedures and other conditions of administrative organs” shall be open to the public as they fall within the scope of mandatory information disclosure. In other words, those government departments did not have legal grounds to reject her request. Yet the three central government agencies that should have been bound by this legislation still disregarded it by offering various pretexts to evade disclosing the information. In addition, Article 24 of the OGI Regulations sets time limits on the disclosure of information as follows:

When an administrative organ receives an application to ask for government information, it should reply to it on the spot if it can. If administrative organ cannot give a reply on the spot, it ought to reply to the applicant within 15 working days from the day of receiving the application. If it needs to extend replying period, it shall ask for the permission from the person who is in charge of government information openness as well as to inform the applicant. The extending time at the most cannot exceed 15 working days.

The stringent stipulation above leaves no wiggle room for those who fail to provide information as requested by the OGI Regulations. However, the average time that Li Yan spent on obtaining the information was between 27 and 28 working days, which meant that almost all government departments that were requested for information openness extended their replying time. This frustrating fact demonstrated that the implementation of the OGI Regulations was still problematic even though it had come into force three years earlier when this lawsuit happened.

Obviously, a huge chasm exists between what the OGI Regulations require and what those defendants did. In the view of Li Yan, if the government promised to do something, it was obliged to keep its promise. In this case, as the OGI Regulations issued by the State Council made explicit provisions to specify what kind of information should be open to the public, all government agencies should have unconditionally observed them. Ms. Li initially supposed she would easily obtain requested information as it was just routine information about the institutional setup and functions of government agen-

cies without reference to any sensitive or confidential information. Contrary to her expectations, however, her journey to request government information openness turned out to be an exhausting and frustrating process. In the end, she even had to go to court, but she did not regret it because she mobilized public attention on government information disclosure in her own way. “If government departments consider they cannot release certain information, they should give reasons,” said Li Yan later: “The government information disclosure is like a bell which will not toll until it is hit” (Zhang 2011).

*Liu Yanfeng v. Shaanxi Provincial Department of Finance and Another* (case 82; Liu 2012; Gong & Li 2012) is another notable case in relation to government information openness. Liu Yanfeng (刘艳峰), an undergraduate from Three Gorges University in Yichang City, Hubei Province, made a complaint against Shaanxi Provincial Department of Finance (SPDF) and Shaanxi Provincial Administration of Work Safety (SPAWS) for their administrative nonfeasance in 2012.

Mr. Liu claimed in his proceedings that Yang Dacai, the director of SPAWS, was seen wearing a number of luxury watches on several occasions, which were inconsistent with his income as a civil servant. Therefore, he applied for information openness by requesting SPDF and SPAWS — two government agencies to disclose the annual income of this official. Yet both these two government departments rejected his application. The SPDF claimed that the information about official personal income did not fall under the category of government information disclosure required by law, whereas SPAWS did not respond his information openness request. Mr. Liu then took them to the court and requested the court to rule that: (1) the response of the SPDF did not comply with the OGI Regulations; (2) the non-response from the SPAWS violated the OGI Regulations; and (3) the two defendants pay a litigation fee. However, he later withdrew the suit for unknown reasons.

This lawsuit pertains to the disclosure of official assets, a hot topic that the public has long been discussing, but the authorities have been dodging. Since the Party is short of high-sounding reasons to stop people from talking about this subject, it often turns a deaf ear to the voice of the public to call for official assets openness as those two local government agencies did in this case. They either refused to provide the requested in-

formation or did not reply to the enquiry from the government information disclosure requester. This litigation thus highlights the different attitudes over official assets openness between government departments on the one side, which habitually cover up the information, and ordinary citizens on the other side who insist on asking for government information openness. In the end, perhaps because of public pressure, the concerned government agency did investigate the accused official who was later sentenced to 14 years in prison for his taking bribes (Wang 2014). Shortly after this case, Mr. Liu (Liu 2012) explained why he filed this lawsuit:

I think, government officials as civil servants have an obligation to disclose their assets to the public. At the same time, we as citizens have rights and responsibilities to push forward government information openness.

In brief, these lawsuits underscore the fact that public-minded citizens are increasingly exercising their legal rights and are increasingly pressuring government agencies and officials to “apply their rules to themselves and abide by principles they have established” (O’Brien & Li 2006, 116).

## **2.2 Challenging State-owned Monopolies**

The state-owned industry giants like the railways, banks and telecommunications companies in China are usually deemed monopolies, because they are notorious for large profits obtained by monopoly instead of market competition. Some scholars even regard the industry monopoly of state-owned enterprises as a major reason for social injustice and inequality in current Chinese society (Zhou & Yin 2012). According to Liu Yuanchun (Feng 2015), the Dean of National Development and Strategy Institute of Renmin University of China, the gap between high-income and low-income industry in China is about four times in terms of urban wage statistics. Those high-income industries are mainly state-owned monopolies such as finance and insurance industry, electric power enterprises, and telecommunications companies (Wang 2013, 93-97).

Since these state-owned monopolies often push their own agenda ahead of consumers’ interests or the public interest (Qi 2012; Zhang 2013, 204-211), they have become one



of major targets of PIL as displayed in Figure 1.3, which indicates that public interest lawsuits aiming at them ranked second (31.82%) after the government (46.59%). These cases relating to consumer complaints focused on such subjects as arbitrary rises in railway ticket prices (case 5), poor toll highway management and service (case 22 & case 59), unreasonable banking service fees (case 21, case 46 & case 47), overcharges by telecommunications companies (case 50 & case 73). The following three lawsuits illustrated these issues that the public are concerned.

### 2.2.1 Charging Arbitrarily Raised Train Ticket Prices

Since the train transportation is the main means of transport in China, the railway authority has sizable influence as the only railway service supplier, so much so that it is colloquially dubbed “the railway boss” (*tie laoda* 铁老大) among the public and media. Because of its dominant position in transportation industry, it often pursues its own interests at the expense of passengers’ interests by introducing a number of disputable policies, including arbitrarily raising train fares or levying compulsory railway passenger insurance without giving notice to passengers. Therefore, as early as 2001, the railway authority was brought before the court in the case of *Qiao Zhanxiang v. the Ministry of Railways* (case 5; “Qiao Zhanxiang” 2002).

Qiao Zhanxiang (乔占祥), a lawyer, accused the Ministry of Railways of arbitrarily marking up railway fares during the Chinese New Year travel rush in 2001. He contended that this seasonal railway fare hike was legally ungrounded due to following three reasons: (1) it infringed his and other passengers’ rights and interests; (2) it did not meet the requirement of due procedure as it was not approved by the State Council;<sup>8</sup> and (3) it did not hold a public hearing required by Article 23 of the Price Law, which prescribes:

In drafting government-set and guided prices such as the price for public utilities, public welfare services, and merchandises of monopoly in nature that are important to immediate interest of people, public hearings presided over by government price de-

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<sup>8</sup> According to the Price Law, the adjustment of the railway ticket price that falls under the category of government-set prices must be approved by the State Council.

partment shall be held in order to solicit views from consumers, business operators and relevant parties to explore its necessity and feasibility.

Beijing No.1 Intermediate People's Court delivered a verdict in favour of the railway authority, holding that the adjustment of railway fares by the defendant was not inappropriate because it had reported it to the concerned government department and obtained its approval. Yet the ruling did not mention the name of this "concerned government department" and whether it was authorized by the State Council. Mr. Qiao did not accept this ruling and appealed to Beijing Higher People's Court, which upheld the first-trial decision.

The train fares hike in this case undoubtedly affected the interests of millions of railway passengers, especially those migrant workers who normally have to crowd into trains for their annual trip home during the Spring Festival — Chinese New Year. One of those arguments presented to the court by the railway authority was that the under-priced tickets led to overcrowding on the train. To put it another way, the fare increase would ease the pressure on railway traffic. Nevertheless, this was a less convincing argument for the public because of an obvious reason that it is a tradition for family reunion from all sides in this most important holiday in China, just like family reunions during the Christmas holidays in Western countries. Regardless of higher or lower train fares, most of those who work and study in other places would still go back to their hometown to get together with their families.

While Mr. Qiao lost the suit in the both first and second instance, this lawsuit had a tremendous impact on society. It was a landmark case in the course of PIL in that it was the first administrative litigation aiming at a ministerial-level agency accepted by the court. Meanwhile, it activated and promoted the public hearings system related to consumer rights. During the second instance of this lawsuit, the State Development and Planning Commission held the first public hearing on the train fare increase scheduled for the following year. Furthermore, it stirred a heated debate in the media and carried forward the spirit of the rule of law through the whole process of the litigation. Speaking on the influence of this lawsuit, Qiao Zhanxiang (Liu 2002) commented in an interview later:

The development of the rule of law requires everyone to make his or her contribution. The big change will not happen unless people begin to do something. It is no big deal whether I won or lost the case. What is more important is that such litigation has fostered the price hearing system and law-based administration.

*Huang Jinrong v. Beijing Railway Bureau* (case 31; Li 2006) is another example, which also targeted the railway authority. Huang Jinrong (黄金荣) in this case charged the Beijing Railway Bureau with levying compulsory passenger insurance premium without giving notice to consumers, as well as questioning its qualification to engage in the insurance business in 2005.

Mr. Huang claimed in his complaint that he happened to learn that the railway ticket he bought incorporated a 2% compulsory insurance premium, but he was not informed about it. There was no such information printed on the ticket, nor did he receive any insurance certificate. He thus considered that it infringed his right to information as a consumer. Meanwhile, he also queried the qualification of the defendant to engage in the insurance business in that this policy that was based on the Decree on the Compulsory Insurance for Accidental Injury of Railway Passengers (CI Degree) enacted by the administration in 1951 was incompatible with the Insurance Law passed by legislature in 1994. Article 6 of the Insurance law clearly stipulates:

Insurance companies shall be set up according to this law to engage in commercial insurance business. No other entity or individual is allowed to engage in such business.

In addition, the plaintiff contended that the similar compulsory insurance premium imposed on airline and cruise passengers had already been cancelled several years ago so it was unreasonable to still charge railway passengers compulsory insurance premium. At the least, he contended that the railway authority should inform passengers about it. Based on these arguments, he requested the court to rule; (1) the defendant add information about compulsory insurance onto the ticket; (2) refund him the compulsory insurance premium he had been charged.

Beijing Railway Transportation Court held in its verdict that the compulsory insurance on railway passengers was in conformity with the CI Decree that had already been open to the public when it was issued, which should be deemed disclosed information. Hence, the plaintiff's allegation that the defendant infringed his right to information was legally ungrounded. The court also claimed that the dispute on the qualification of the defendant to engage in the insurance business went beyond its jurisdiction. Mr. Huang refused to accept the first instance decision and made an appeal. The Intermediate Court of Beijing Railway Transportation turned down his appeal and sustained the first instance ruling.

This litigation focused on two issues that concerned the public. The first was whether the information regarding railway passengers' rights was sufficiently disclosed. The defendant argued that the CI Decree did not require marking the information of compulsory information on the railway ticket except for the date, price and station name. It further asserted that it was impossible to print all information on a card type of ticket. Yet the plaintiff did not think that these arguments were grounded. He contended that the CI Decree did not exempt the defendant from the obligation to notify passengers of relevant information in terms of law, because Article 8 of the LPCRI explicitly prescribes: "A consumer shall have the right to know the true facts concerning commodities purchased and used or services received."

Mr. Huang challenged the defendant with two questions in the court. First, if the defendant did not provide passengers with sufficient information, how could passengers learn that they have already purchased personal accident insurance while buying tickets? After all, it is unrealistic to assume that most passengers have read the CI Decree. Second, if passengers did not have idea of this information, how would they seek compensation if they were injured on the train?

The second issue was whether the railway authority was authorized to engage in the insurance business. In light of the CI Decree that was enacted 50 years ago, it had such authorization. Nonetheless, according to the Insurance Law promulgated in 1994, it was not authorized. For this inconsistency between the administrative regulation and the law, the plaintiff contended that the CI Decree should be under the higher-ranking law if it was not consistent with the latter because Article 79 of the Legislation Law makes it

clear that “The legal effect of laws is higher than that of administrative regulations, local regulations, and rules”.

By way of this litigation, Mr. Huang revealed a hidden fact that the public might not have known that a train ticket — a certificate of the contract between passengers and the railway authority, incorporated compulsory insurance premium. This lawsuit not only triggered off a heated debate on the legality of such compulsory insurance based on the administrative regulation that was inconsistent with the law, but also reminded the public of heeding other consumer traps. Additionally, this case demonstrates that rights protection is inseparably connected with information disclosure. If consumers are denied their right to access to information that concerns them, they will not be able to effectively protect their other rights.

Although Huang Jinrong lost the case in the court, his effort encouraged other citizens to continue question this controversial policy, which ultimately compelled the concerned government department to re-examine it. According to the Decree No. 628 issued by the State Council, the CI Decree was nullified in January 2013 (Qi 2012), which ended the history of compulsory passengers insurance.

### **2.2.2 Accusing State-Owned Bank of Overcharging**

Similar to the railway authority, state-owned banks in China are widely accused of encroaching on customers’ rights and interests time and again by means of arbitrary charging policy, but in the name of market operation or market competition. Therefore, they have also become the target of PIL practitioners. In *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China* (case 21; Yang 2005), Yu Shanlan (喻山澜) who is a journalist from China Industry and Commerce News initiated a lawsuit in 2004 against Beijing Branch of the Industrial and Commercial Bank of China (Beijing Branch of ICBC) for alleged unjust gain from overcharging him when he applied for a new public transport card to replace a lost one.

This type of public transport card called “Peony Card” was jointly developed by Beijing Branch of ICBC and Beijing Traffic Management Bureau, so all vehicle drivers in Beijing were required to have it to pay fines for traffic offences. If it was reported lost, the

user had to pay ¥100 (€14.16) for card re-issuance. Mr. Yu argued that this charging fee had violated the Price Law and relevant administrative regulations. Hence, he requested the court to rule that the defendant refund the money he had paid plus interest as well as to suspend this policy.

After losing the case in the first instance, the plaintiff appealed to Beijing No.1 Intermediate People's Court, which made a final decision in favour of him, holding that the defendant refund him ¥69.20 (€9.81) by deducting the cost of the card and interest. Not long after the verdict, Beijing Branch of ICBC refunded its overcharges to other concerned drivers, too. At the same time, Beijing Municipal Development and Reform Commission, which is in charge of price management, proclaimed that the card re-issuance fee would be reduced to ¥30.80 (€4.36).

The question at issue in this lawsuit is whether this charging policy was lawful and reasonable as well as goes through due procedure. By making use of his advantage as a journalist, the plaintiff visited concerned central and municipal government departments and acquired two well-founded legal arguments to back his accusation. First, this charging policy was founded not to be registered in Beijing Municipal Pricing Bureau, which was in conflict with the law. In light of the Price Law, such charging policy concerns tens of thousands of drivers' rights and interests, it falls under the category of government guided prices, so it must be examined and approved by the pricing authorities.

Second, according to the Management Measures on IC Card Application and Charges (IC Card Management Measures) jointly issued by four central government departments: the State Development and Planning Commission, the Leading Group of National Golden Card Project Coordination, the Ministry of Finance and the People's Bank of China in 2001, IC card users should be charged with the cost of card if they request a replacement of the card. In terms of this regulation, the charging fee imposed by the defendant in this case far exceeded the cost of the card. Therefore, the legitimacy of this charging policy was questionable.

In addition, this litigation also refers to a deeper issue that the public have long been concerned, i.e., how the government plays its role in a market economy by separating it from businesses. Otherwise, it is difficult for it to remain neutral in policy-making and

law enforcement as this case testified. It was the endorsement of the traffic management authorities that enabled Beijing Branch of ICBC to excessively charge vehicle drivers by circumventing relevant laws and regulations, which not only affected fair market competition, but also harmed the interests of drivers.

All these three lawsuits demonstrated the arbitrariness of concerned state-owned enterprises. They either ignored laws and regulations or selectively followed those favourable to them. To make things worse, a few government departments, which should have acted as impartial market regulators, endorsed those arbitrary policies and monopolistic conducts that were contrary to the aim of consumer protection. Under the circumstances, it is no wonder that PIL practitioners aim at both state-owned monopolies and the government.

### **2.3 Calling for Equal Access to Opportunities and Rights**

The household registration system (*hukou* 户口) in China that was established 60 years ago in 1958 classifies the whole population into two groups: rural and urban residents, on the basis of their parents' origin (for a detailed description of *hukou* system, see Wang 2005). Accordingly, these two groups of people enjoy different citizenship entitlements. The rural population who is denied access to a wide range of social benefits is actually second-class citizens in China. For instance, their residence rights in cities are severely restricted. The majority of migrant workers who live, work and pay taxes in urban areas for many years still cannot be accorded full citizenship rights. Even their city-born children are likewise denied social benefits including equal education in the city where they live. This is undoubtedly a blatant discrimination. Some critics have even regarded this policy as a kind of apartheid (Solinger 1999; Shambaugh 2016, 77). Shambaugh (*ibid*) has accused it of "a key instrument in the totalitarian toolbox". Under such policy, some local governments have enacted a number of local legislation restricting non-locals' rights in employment, education and business, which further institutionalizes discrimination.

On the other hand, nonetheless, along with economic and social development, the Chinese populace, especially the younger generation have increasingly expressed their dissatisfaction and concerns of overt discrimination based on the household registration

system. The demand for equal rights and equal treatment under the law has become one of significant causes for them to engage in PIL. The following two lawsuits involving anti-discrimination in education and employment illustrated how PIL litigants have made a quixotic legal battle to fight against discrimination and strive for equal access to opportunities and rights.

### 2.3.1 Querying Unfair University Admissions Policy

In *Jiang Yan and Others v. the Ministry of Education* (case 6; Yan 2013; Geng 2013), three claimants — Jiang Yan (姜妍), Luan Qian (栾倩) and Zhang Tianzhu (张天珠) who were national college entrance examinees from the City of Qingdao, Shandong Province, challenged the Ministry of Education (MOE) for an alleged unfair university admissions decision affecting their equal right to higher education at the Supreme People's Court in August 2001.

These three students received scores of 522, 457 and 506 respectively in the 2001 national college entrance examination composed of six subjects with total of 600 scores. With such scores, they could have entered into key universities in Beijing had they held a Beijing household registration (*Beijing hukou* 北京户口) because the minimum pass marks for university admission in Beijing that year was about 100 scores lower than that in Shandong Province. In their hometown, however, these three plaintiffs were only qualified to enter into junior colleges. Hence, they contended that this policy was inconsistent with the equal right to education stipulated by the Constitution and the Education Law. Article 46 of the Constitution articulates: “Citizens of the People’s Republic of China have the duty as well as the right to receive education.” Article 9 of the Education Law elucidates:

Citizens of the People’s Republic of China shall have the right and obligation to receive education. All citizens, regardless of ethnic groups, race, sex, occupation, property status or religious belief, shall enjoy *equal opportunities* for education according to law [emphasis added].



The “equal opportunities” here of course refer to receiving higher education without suffering regional or geographical discrimination, but those plaintiffs faced with such discrimination that hampered them from receiving better educational opportunities because of their household registration. Further, Article 36 of the Education Law continues to prescribe that “Educatees shall according to law enjoy equal rights in enrolment, admission to schools of a higher levels, employment, etc”. This article also stresses “equal rights” rather than recognizing discrimination in education.

In light of these stipulations related to anti-discrimination, the plaintiffs challenged the MOE’s administrative decision on the 2001 national college enrolment plan, requesting the court to: (1) confirm that the defendant’s administrative decision of enacting the 2001 National College Enrolment Plan was not in accord with the Constitution and the Education Law; (2) order the defendant to avoid making similar administrative decision in the future by sending it a judicial proposal.

One month after they had submitted the litigation application, the SPC informed the plaintiffs that their litigation application should be under the jurisdiction of the Intermediate People’s Court. They thus terminated their proceedings and claimed that they had realized the goal of their litigation to bring this controversial subject in the spotlight. They must have been aware of the fact that even though they were allowed to sue in an intermediate court, they would not have any chance of achieving expected result, because the dispute over the university admissions policy could not be addressed at an intermediate-level court.

This lawsuit concerns “a grievance about public policy” (Chayes 1975-1976, 128). It is well known that higher education is a significant path to social and economic mobility for youth, especially for those who live in rural areas or less developed regions in China, as it is one of few available ways to raise their social status and improve their economic situation. Nonetheless, it is a difficult path for them under the household-registration-system-based university admissions policy. In terms of this policy, each province is allotted a certain percentage of university admissions quotas by the MOE every year, then new students will be admitted to universities according to the pass marks of each province. Thus, there is a great difference in the undergraduate acceptance rate among different regions. Moreover, national key universities whose fund-

ings come from state budget are supposed to equally accept students from all provinces, but they are permitted to admit more local students. As a result, this policy leads to institutionalized inequality in higher education in that students with the same examination scores, but different household registrations, do not have equal opportunities to be admitted to universities.

It is apparent that this institutional arrangement is beneficial to students who live in large cities where there are more and better higher education institutes. For instance, students with Beijing and Shanghai household registration have more opportunities of being admitted to universities even though their examination scores are lower than those living in other areas, which can be confirmed from the comparison of population, the number and enrolment of higher education institutes, and education funds in Beijing, Shanghai and Shandong in 2001, when this litigation occurred (Table 2.1).

**Table 2.1: Comparison of Three Regions Related to Education (2001)**

<b>Region</b>	<b>Beijing</b>	<b>Shanghai</b>	<b>Shandong</b>
Population (million)	13.83	16.14	90.41
The Number of Universities (unit)	61	45	65
The Ratio Between the Population and the Number of Universities (million)	0.23	0.36	1,39
University Enrolment (person)	115379	98579	183553
The Ratio Between the Population and University Enrolment (percentage)	0.83	0.61	0.20
Education Funds (billion)	25.03	20.08	24.62
The Ratio Between the Population and Education Funds (person)	¥1810 (€256)	¥1244 (€176)	¥272 (€39)

Source: Drawn by the author on the basis of the data from *China Statistical Yearbook 2002*

It can be seen from Table 2.1, in terms of population, Shandong Province had over 90 million people then, which was 6.5 times that of Beijing and 5.6 times that of Shanghai. Yet the number of higher education institutes was 65, merely 4 and 20 more than those in Beijing and Shanghai respectively. In other words, there was one university for every 0.23 million people in Beijing, 0.36 million people in Shanghai, but 1.39 million people in Shandong Province. Obviously, the ratio between the total population and higher education institutes among these three administrative areas was greatly imbalanced. Moreover, most higher education institutes in Shandong Province are small and medium-sized junior colleges, whereas more comprehensive universities are located in Beijing and Shanghai.

Education funds allotted to these three regions are another example of such unfairness. On average, each person in Beijing and Shanghai enjoyed an education budget of ¥1,810 (€256) and ¥1,244 (€176) respectively, whereas each person in Shandong Province only had ¥272 (€39) at the time. It is worth to note that Shandong, located in Eastern China, is also an economically developed province even if it is not as developed as Beijing and Shanghai, which means it can provide relatively more educational opportunities to students relative to some less developed provinces like Jiangxi, Qinghai and Gansu Province. Nonetheless, students there still complained about their unequal treatment in higher education.

To be sure, it is a perennial problem due to imbalanced economic, social and cultural development over a long period, but the uneven distribution of educational resources guided by the MOE has further intensified the unfairness and inequality between regions. For example, there are more education funds and resources in Beijing and Shanghai as well as students there have more opportunities to receive higher education, but the minimum university pass marks in these two megacities are still much lower than that in other provinces. Obviously, such policy could hardly be justified in terms of the principle of equal access to education.

Despite the fact that this lawsuit was not registered in the court, it attracted nationwide attention and debate, because it accentuated the unequal higher education opportunities and unfair higher education resources distribution. Maybe under the pressure of public opinion, the MOE had to admit: “This is a complicated issue, but we will be looking

into it” (Yang 2013). Since then, this policy concerning millions of students’ rights and interests has been made a few adjustments. For instance, education authorities at provincial level have been empowered to draw up examination papers under their jurisdiction; university administrations have been granted more autonomy in admitting students, etc. (Geng 2013).

### **2.3.2 Striving for Equal Employment Opportunity**

The household registration system not only leads to unequal opportunities in higher education as discussed above, but also results in systemic employment discrimination. The case of *Huang Yuanjian v. the National Grand Theatre* (Ye 2007; “Huang Yunjian” 2007) highlighted this problem, which became the focal point of media coverage at the time.

In April 2007, Huang Yuanjian (黄元健), a graduate student from the Law School of the Central University of Finance and Economics, brought the legal person of newly built National Grand Theatre (NGT) before Beijing Xicheng District People’s Court for alleged infringement of his equal right to employment.

In a recruitment advertisement, the NGT had made Beijing household registration one of five criteria for its 315 job vacancies. In other words, job applicants without Beijing household registration would be excluded from its staff recruitment. Mr. Huang questioned the legitimacy of this requirement by arguing that it contravened the Labour Law and the Law on Promotion of Employment, which require equal right to be employed. Article 3 of the Labour Law states:

Labourers shall have the right to be employed on an *equal basis*, choose occupations, obtain remuneration for their labour, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training in vocational skills, enjoy social insurance and welfare, and submit application for settlement of labour disputes, and other rights relating to labour as stipulated by law [emphasis added].

The Labour Law here emphasizes “equal basis” in employment. In the same vein, Article 26 of the Law on Promotion of Employment also requires employers to provide job seekers with equal employment opportunities against discrimination:

When an employing unit recruits persons or when a job intermediary engages in intermediary activities, it shall provide persons with *equal opportunities* and fair conditions for employment, and it shall not discriminate against anyone in this respect [emphasis added].

As for those job positions including stage technology and management, program production, administrative manager, and computer system maintenance, Mr. Huang contended that there was no evidence to prove that Beijing locals could do them better than non-locals. Furthermore, he contended that the NGT with investment of ¥2.69 billion (€3.81 million) was totally funded by the state, which meant all taxpayers throughout the country contributed to this new cultural icon. Therefore, it was supposed to provide equal employment opportunities to all job seekers. Based on these arguments, the plaintiff requested the court to order the defendant: (1) quit the act of infringement; (2) admit its recruitment advertisement as invalid; and (3) make an apology in the media outlets that ran its recruitment advertisement.

This case immediately resonated with the public, but his litigation application was turned down by the court two months later on the grounds that he was not an interested party in the case, because he could not prove that he had applied for a job advertised by the NGT.

In fact, such overt employment discrimination on the basis of household registration is commonplace in China, so much so that both employers and job seekers have already taken it for granted. Until Huang Yuanjian filed the suit, people had rarely challenged the legitimacy of this sort of discrimination in the court. A commentary ran in the *21<sup>st</sup> Century Business Herald* remarked that the problems demonstrated in this lawsuit “reflect scarce resources and lack of rule of law idea about fairness and justice” (Ye 2007). This article went on to make the claim that “It is necessary to raise public awareness of this issue if we want to make ground-breaking reform over household registration dis-

crimination” (*ibid*). However, the frustrating fact is that although this problem has long been acknowledged, overt employment discrimination still exists without any breakthrough at all levels of policy-making. Hence, this litigation demonstrates that non-discrimination in employment lags far behind public demand.

To summarize, these two anti-discrimination lawsuits regarding controversial university admissions policy and employment requirements display growing public concerns over education and employment discrimination and unequal treatment. While they failed to be registered in the courts, they still achieved some positive results in terms of bringing these topics into the limelight, mobilizing public opinion against discrimination and promoting a few incremental reforms to reduce institutional barriers in relevant fields later.

## **2.4 Struggling for a Cleaner and More Liveable Environment**

The environmental situation in China today is considered as “the world’s worst” (Shambaugh 2016, 89), which leads to “diminishing (and polluted) water resources, life-threatening and cancer-causing air pollution, desertification, deforestation, climate change, inefficient energy usage, and so on” (*ibid*). The severe environmental pollution and environmental degradation due to ongoing rapid industrialization and urbanization as well as current GDP-oriented development model ignoring environmental protection has become not only an environmental problem, but also an urgent social and political issue relating to social stability.

The environmental crisis has stimulated widespread public concern, discontent and protest throughout the country in recent years, which is pressuring the government to take it seriously and make policy adjustment to address this problem. On the part of civil society, more and more citizens and CSOs are participated in various environmental protection activities for a cleaner and more liveable environment. Among of them, PIL practitioners are active participants who have frequently used legal weapon to take environmental polluters and inactive government watchdog to courts. The following two cases illustrated how they made use of the Environmental Protection Law (EPL) to complain environmental polluters and sue the government for its failure to carry out its duty to address environmental pollution.

### 2.4.1 Monitoring Environmental Pollution

In October 2010, the All-China Environment Federation (ACEF) and Guiyang Centre for Public Environmental Education filed a lawlodged a complaint suit against Dingpa Paper Mill in the City of Guiyang, Guizhou Province for its discharging industrial wastewater into the main river in the city (case 49; “All-China” 2010; Liu 2011).

The Nanming River that runs through Guiyang City is approximately 150 kilometres long. As this river is important to the ecological environment of the city and the health of residents along the river, it is called “the mother river of Guiyang City”. Dingpa Paper Mill was just built upstream. Since 2003, it had been covertly discharging industrial wastewater into the river, which resulted in a long belt of pollution and severe water pollution in the river.

After receiving the report from local residents, ACEF sent its staff to Guiyang City to investigate and confirm the pollution situation. It then took the defendant to court with a local environmental protection institution. In December 2010, the court made a decision in favour of the plaintiffs, ordering that the defendant must immediately quit discharging industrial wastewater into the river, eliminate the hazard generated by the wastewater, and bear all the litigation costs and pollution inspection fees. In the meantime, the court sent a judicial proposal to the local environmental protection bureau, suggesting that it check other paper mills near the river. Before long, the local EPB responded to the public by announcing that it had ordered all paper mills along the river to suspend production until environmental concerns were addressed.

This was the first lawsuit lodged by an environmental protection organization which went to trial and obtained a favourable ruling. It should be noted here that, differing from other CSOs engaged in PIL, ACEF is a government-sponsored CSO based in Beijing under the Ministry of Environmental Protection. This means it has some authority when confronting small and medium-sized privately-owned enterprises. Moreover, local authorities including the local judiciary and local administrative agencies have to show it some respect in most instances, because they cannot be sure whether the ACEF is acting just by itself or is representing upper-level environmental authorities. In other words, if, for example, other CSOs without such background had filed this lawsuit, they might not have achieved the same outcome.

In short, this is also a significant case over the course of PIL because of its model effect. It not only contributed to environmental governance by successfully forcing a polluting enterprise to quit discharging wastewater into the river through litigation, but also set a good example for other environmental CSOs to take more legal action against environment polluters.

#### **2.4.2 Suing for Government Inaction on Environmental Protection**

As a government watchdog, the EPB at various administrative levels plays a crucial role in environmental protection, but it often ignores the reports from citizens and fails to implement its duty to monitor polluting enterprises. Consequently, it is also the target of PIL proponents exemplified in *Chen Faqing v. Yuhang District Environmental Protection Bureau* (case 9; Liu 2005).

Chen Faqing (陈法庆) is a peasant in Hangzhou, Zhejiang Province. In a town with a population of 20,000 where he lives, there were eleven large and small quarries which caused heavy pollution. For as long as 20 years, residents there suffered from deafening noise and dust clouds generated by blasting rocks. Since 1999, Mr. Chen had reported it to Yuhang District Environmental Protection Bureau (YDEPB) and the town government more than ten times, but they were said to refuse to take necessary measures to cope with this problem. Instead, they had responded to him that the quarry dust was a normal situation, and these quarries contributed to the local economy.

As the administrative watchdog and local government did not address his environmental concern, Chen Faqing purchased a camera to shoot video of the pollution situation as evidence in June 2002. He then took YDEPB to the local court for alleged administrative nonfeasance in investigating polluting enterprises and reducing environmental pollution. In his proceedings, Mr. Chen invoked the Article 16 of the EPL to buttress his claim, which prescribes as follows:

The local people's government at various levels shall be responsible for the environment quality of areas under their jurisdiction and take measures to improve the environmental quality.



While Yuhang District People's Court confirmed the fact that these quarries polluted the environment in the neighbourhood, it still dismissed his litigation application on the grounds that the defendant had already implemented its duty, but did not detail how the defendant monitored the polluting quarries and address the environmental pollution. During the litigation, it caught the attention of Jie Zhenhua (解振华), the then Director of the State Bureau of Environmental Protection, who (Liu 2005) issued a written instruction on this case:

Good to hear that! This case deserves closer attention. We can turn it into a driving force to promote strict enforcement of law and joint law enforcement between environmental protection departments and masses of people.

Possibly having read the written instruction of the central government watchdog, the YDEPB and the town government immediately set up a leading group on dust remediation and took a series of measures to address the environmental pollution. It was reported that it reduced 80% of dust and noise in a short time (*ibid*), so residents there can breathe cleaner air again.

We can see the persistent effort of environmental CSOs and ordinary citizen in these two lawsuits in which they devoted their time and resources to fight against environmental violators and inactive government agency for the public interest in spite of many difficulties and obstacles. In the words of Chen Faqing (*ibid*): "As long as the problem can be solved, it does not matter how many lawsuits I lose."

## **2.5 Concluding Remarks**

The PIL cases presented in this chapter show how Chinese citizens have made use of the law and judicial process to claim their rights, urge the government to fulfil its duty, challenge arrogant state-owned monopolies, and make their voices heard. These lawsuits were involved in government malfeasance or nonfeasance, government information non-disclosure, consumer rights violations, unfair higher educational opportunities, discriminatory policies in employment, and environmental pollution. While these lawsuits as a whole did not change the status quo too much, the efforts of PIL propo-

nents have still achieved positive results in terms of raising citizens' awareness of public interest, mobilizing public opinion, and agitating the government to pay closer attention to a few long-standing social problems. There are three conclusions that can be made from the discussion above.

First of all, PIL is a bottom-up approach for Chinese citizens to strive for their legitimate rights and get the law implemented. These lawsuits discussed in this chapter have demonstrated the initiative, courage, and social responsibility of PIL practitioners. Although their personal interests were trivial in relation to the public interest involved in these cases, they were still energetically engaged in such legal action for a just and better society. As one PIL activist put it:

Faced with social injustice and inequality, it is unrealistic to just pin our hopes on someone else. We must take on our own social responsibility as qualified citizens to strive for civil rights and promote social change through some concrete citizen actions like PIL (IC2).

Second, PIL practitioners persisted in taking up the law and exploiting the rule of law rhetoric to protect their rights and resist rights violators, which exhibits their rationality and the spirit of the rule of law. Li Yan and Liu Yanfeng made use of the OGI Regulations to complain concerned government agencies for their refusal to disclose requested information. Huang Jinrong invoked the LPCRI and the Insurance Law to question the legitimacy of compulsory insurance levied by the railway authority. Yu Shanlan cited the Price Law and the IC Card Management Measures to accuse the state-owned bank of ripping off consumers. This type of citizen resistance in some way forced irresponsible or unresponsive government agencies and greedy vested interests either to step back or to endure more criticism from the media and public. In doing so, these resisters "have proved strikingly adept at using the laws to assert their rights and interests against the government and others" (Horsley 2007, 95).

Finally, even though these PIL practitioners "can merely scratch at the surface in a wide range of cases" (Fu 2011, 355) without touching upon the system, they still make sense to foster some policies adjustment through litigation. As Hershkoff (2001, 14) has sug-

gested that “for marginalized groups, litigation sometimes offers the only, or least expensive, entry into political life at a given time”. Otherwise, they might have less chance to make their voices heard. For instance, Jiang Yan and other two students (case 54) fixed the spotlight on a perennial issue relevant to equal access to opportunities in higher education, which later stimulated the reform of university admissions policy. Qiao Zhanxiang (case 5) challenged the railway authority in the courtroom to precipitate the development of the public hearing system. Speaking of such minor achievements, Tarrow (2008, 10) put it this way:

[...] such incremental changes and the unintended responses to them can often be more effective in bringing about regime change than more open challenges that question the bases of political legitimacy.

Put simply, albeit seemingly ordinary and trivial, these PIL cases have highlighted the flaws of a number of legislation and policies, which in effect challenge the Party’s claim to be consistently correct. In this regard, PIL symbolizes the citizen resistance in a one-party state. Meanwhile, such grassroots legal action can contribute to precipitating the rule of law and incremental social change in the long run. Of course, under a restrictive political and legal environment, PIL proponents have to be cautious while engaging in this type of litigation, an issue which will be addressed in the next chapter.

## Chapter 3

### Non-Confrontational Strategies in PIL

However, despite the growth of an increasingly robust legal system and broader legal consciousness in the general population, the Communist Party retains ultimate control, especially over the handling of sensitive political, economic, and social issues.

— Jamie P. Horsley (2007, 95)

The rapid economic and social development over the past three decades in China has not only created more private spheres in which ordinary people can enjoy certain autonomy in economic, cultural and social domains, but also spurred them to make more claims in public spheres. Nonetheless, in the context of the rule of law with Chinese characteristics, claiming consumer rights or equal right to opportunities in education and employment is one thing, whereas advancing citizens' political rights like freedom of association or freedom of speech is another thing. It is obvious that the authorities cannot tolerate those lawsuits that go beyond the boundaries of challenging its rule, although there is not a clear line of demarcation here. In general, there is an unspoken red line that one is not supposed to cross, i.e., the boundary between sensitive and non-sensitive issues.

With reference to sensitive issues in China, it is a vague term that can hardly be precisely defined because the Party has not given a clear definition or drawn a clear line to differentiate sensitive topics from non-sensitive ones apart from a few highly sensitive topics such as “June 4” (六四) or “Falungong” (法轮功). Some sensitive issues may refer to freedom of expression or freedom of association; others may involve family planning or religious believers. Even those regarding food safety or air pollution that affect public health without touching political taboo may also be labelled as sensitive issues. As for what kinds of issues and lawsuits are politically sensitive or non-sensitive,

“the government possesses the ultimate power to judge whether an action crosses its boundaries” (Shi & Cai 2006, 331). In this situation, if some litigation applications are deemed sensitive by the authorities, they are difficult to be registered in the court as observed by Pils (2006, 1215):

Indeed, while judicial practice may flourish in some areas of law in China, certain types of rights infringement have little chance of being adjudicated, or of being adjudicated fairly, by courts, because courts have no independent authority to adjudicate in those areas.

PIL proponents are certainly aware of the political reality and limits of such legal action. In order to avoid political trouble and make their lawsuits effective, they normally frame their claims that are “neither clearly transgressive nor clearly contained” (O’Brien 2004, 105), which is what O’Brien called the “boundary-spanning contention” that is tied to the concept of rightful resistance. In his words (*ibid*), “boundary-spanning contention” is

[...] a form of contention that goes on partly within the state and it hinges on the participation of state actors. It exists in a middle ground that is neither clearly transgressive nor clearly contained.

According to his argument, such “boundary-spanning contention” is supposed to be self-restrained without going beyond the boundaries that the authorities set. In doing so, resisters have some room otherwise they might lose such room. Also, its success relies on the sympathy of concerned government agencies and officials. It has to be admitted that in a one-party state, the boundary-spanning contention is one of effective tactics for rightful resisters when they confront the government and vested interests with controversial social issues. Otherwise, they may encounter unanticipated trouble. If, for instance, a lawsuit is beyond the boundary that the authorities can tolerate, it may lead to frustration or failure for claimants because of possible intervention. On the other hand, if it is too contained, it may not achieve anticipated outcome as the powerful could be oblivious to it. Such delicate balance applies to all forms of rightful resistance including

PIL. It is undeniable that lodging PIL depends largely on the party-state that dominates almost all social and political resources, which means it can prohibit litigants from filing those lawsuits that it does not favour. Under such circumstances, PIL practitioners have to be cautious of not offending the authorities while filing lawsuits.

This chapter sketches out three non-confrontational strategies used by PIL litigants to shed some light on how they cautiously take legal action and push forward the boundaries. It also examines how the authorities respond to this grassroots legal action. First, it surveys the main PIL litigation areas to display that PIL is generally restricted to less politically-sensitive areas. Secondly, it looks into how PIL litigants pay attention to less controversial cases through two influential lawsuits, i.e., *Hao Jinsong v. Beijing Railway Bureau* and *Du Baoliang v. Traffic Police Detachment*. Thirdly, it analyses how PIL practitioners scrupulously claim their less sensitive rights in a number of seemingly politically-sensitive cases exemplified in the cases of *Dong Jian v. the Ministry of Health* and *Lin Lihong v. the Shenzhen Customs*. Finally, it examines the Party's response to PIL by arguing that the Party is tolerant of PIL, but keeps a watchful eye on it.

### **3.1 Restricting Litigation to Less Politically-Sensitive Areas**

Generally speaking, in the post-Mao period since the late 1970s, the party-state has no longer advocated for “the dictatorship of proletariat” and used mass terror and violence to control society as it did in the totalitarian Mao-era.<sup>9</sup> This policy adjustment in social governance leaves citizens certain social space for “licensed participation” (Christiansen & Rai 1996, 142-148) so long as they do not advocate for democracy or put forward some other political demands. As China is still a one-party state intolerant of political opposition and poignant criticism, PIL practitioners are well aware of this reality and have to cautiously push their agenda, which can be seen from their corresponding strategies in PIL. The first strategy they have adopted is to restrict their litigation to less politically-sensitive areas as much as possible. In an interview, a legal scholar explained it as follows:

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<sup>9</sup> This assertion just describes a general political situation in the post-Mao era, which does not mean to exclude a few exceptional situations and incidents. For example, the authorities even used heavily armed forces to violently crack down peaceful Tiananmen Democracy Movement in 1989.

Although the Party and government advocate governing the country according to law, it is difficult at the moment because of a crucial question that is yet to be answered. Is the Party above the law or the law above the Party? Given this consideration, it is understandable why PIL activists tend to distance them from politics (IC18).

Some other PIL practitioners also agree with this point of view. Hao Jinsong (Kuai 2009), a prominent PIL activist who once lodged a series of lawsuits against the railway authority and other state-owned monopolies had this to say when asked about his litigation strategy by the media:

If you try to push the government forward, you should convince it that what you want to do is just push it forward rather than to have other motives. You also need to make the government feel safe and be able to withstand the pushing force imposed on it. In this way, the government will feel safe, you will be safe, and bystanders will also know that you are safe.

The “safe” here means that someone is not viewed as a political troublemaker by the authorities, so he or she can continue to engage in PIL. Meanwhile, other people would not have to alienate him or her from political concerns. Another public interest lawyer who has been focusing on migrant workers’ rights also identified this standpoint as being important in filing public interest lawsuits:

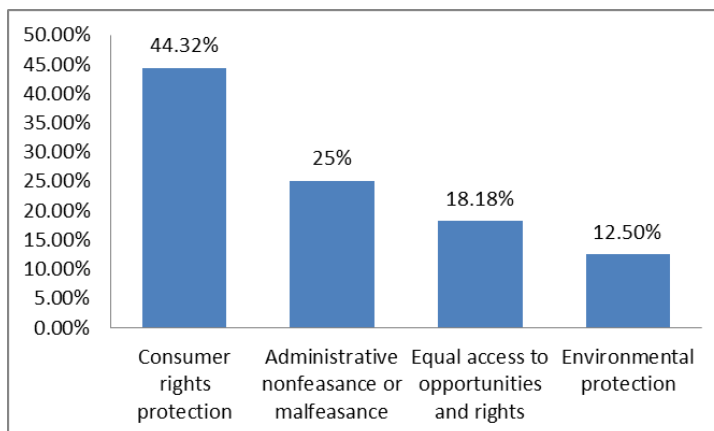
Although we have sufficient legal evidence in most cases to bring concerned government bureaucrats before the court, we cannot be too tough, and we have to consider the face of the government. After all, we are in a society where the rule of law has not been in place yet (IC5).

Having recognized the restrictive political and legal reality, PIL practitioners usually file complaints in less politically sensitive areas such as consumer rights protection, administrative malfeasance or nonfeasance, equal access to opportunities and rights

against discrimination, and environmental protection, which are displayed in Figure 3.1 below.

**Figure 3.1: Types of PIL Cases 1996-2012**

(n=88)



### 3.1.1 Focusing on Consumer Rights Protection

As presented in Figure 3.1, nearly half of complaints (44.32%) concentrated on consumer rights protection, for which there are two likely explanations. It is a litigation area in which many disputes, ranging from commodity price and service quality to food safety and sales contract, have frequently occurred. As some commodity and service providers, specifically those state-owned monopolies, show their disregard for consumer rights through various unfair contracts, ordinary citizens often encounter problems relevant to consumer rights in their daily lives. In *Qiao Zhanxiang v. the Ministry of Railways*, for example, the plaintiff sued the railway authority for arbitrarily raising train fares without due process. In *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China*, the complainant charged a state-owned bank for its making unjust profits by overcharging him.

At the same time, since lawsuits regarding consumer rights protection are commonly considered as the least politically sensitive, they are relatively easy to be registered in the court and obtain favourable rulings for PIL litigants. Table 3.1 below exhibits that the winning ratio for PIL plaintiffs in this area is 13.63%, which is much higher than three other litigation areas, i.e., administrative malfeasance or nonfeasance, equal access



to opportunities and rights, and environmental protection, even though they are also deemed less politically sensitive (3.41%, 2.27% and 4.55%, respectively).

**Table 3.1: Outcome for PIL Plaintiff 1996-2012**

(n=88)

CAT	Won	Lost	Settlement	Dismissal	Rejection	Withdrawn	No.
CRP	12 (13.6%)	5 (5.7%)	3 (3.4%)	18 (20.5%)	0	1 (1.1%)	39
ANM	3 (3.4%)	1 (1.1%)	1 (1.1%)	9 (10.2%)	5 (5.7%)	3 (3.4%)	22
EAOR	2 (2.3%)	3 (3.4%)	4 (4.6%)	4 (4.6%)	2 (2.3%)	1 (1.1%)	16
EP	4 (4.6%)	4 (4.6%)	3 (3.4%)	2 (2.3%)	2 (2.3%)	0	11
Total	21 (23.9%)	9 (10.2%)	11 (12.5%)	33 (37.5%)	9 (10.2%)	5 (5.7%)	88 100%

Notes:

CRP: consumer rights protection;

ANM: administrative malfeasance or nonfeasance;

EAOR: equal access to opportunities and rights;

EP: environmental protection.

### 3.1.2 Questioning Administrative Malfeasance or Nonfeasance

Another field that has generated a considerable volume of public interest cases (25%) pertained to administrative malfeasance or nonfeasance. In these lawsuits against the government discussed in this study, PIL practitioners usually complained about unfair administrative decisions affecting their rights and interests, discriminatory policies in education and employment, and government information non-disclosure pertaining to public interest, rather than accusing the government of abuse of power or violation of human rights.

This preference for PIL proponents highlights the difference between PIL and rights defence litigation even if they are both forms of rights-based litigation. The former mainly focuses on, as mentioned earlier, economic rights, consumer rights, environmental rights, and equal access to opportunities and rights, whereas the latter includes assumed sensitive cases such as forced demolition, rights of expression, rights of religious freedom, and rights of association. As a result, PIL practitioners have certain room for

manoeuvre, while rights defense lawyers are not tolerated by the authorities as discussed in introductory chapter.

Just taking a glance at a few PIL cases in this research, we can further understand why PIL is not beyond the boundaries. For instance, in *Huang Jinrong v. China Insurance Regulatory Commission* (case 43), the claimant charged the watchdog in the insurance industry for its failure to check the railway authority that was engaged in the insurance business without qualification under the Insurance Law. This was just the dispute over whether the administration had implemented its duty to oversee and regulate the insurance market. The plaintiff in *Li Yan v. the Ministry of Education and Others* (case 54) complained about three administrative agencies for their refusal to provide her requested government information that was not in conformity with the OGI Regulations. As these two lawsuits were focused on administrative nonfeasance and information non-disclosure, they had nothing to do with the matter of political sensitivity.

### **3.1.3 Calling for Equal Rights in Education and Employment**

Among PIL cases reviewed in this research, those calling for equal access to opportunities and rights in education and employment made up 18.18% of the total cases. Litigants in these lawsuits struggled for their equal rights in education and employment that are closely tied to their subsistence and career development. To put it another way, they are more care about their equal rights and economic rights without having a political dimension.

For example, in *Jiang Yan and Others v. the Ministry of Education* (case 6), three plaintiffs claimed that the decision about the national college enrolment plan made by the Ministry of Education had affected their equal rights to higher education that led to their admittance to junior college, although their examination scores were higher enough to be admitted to key universities in Beijing if they held Beijing household registration (*Beijing hukou* 北京户口). In another case of *Huang Yuanjian v. the National Grand Theatre*, the litigant complained that his equal rights to employment was violated because of the employment discrimination from the defendant which merely provided job opportunities to those with Beijing household registration despite the fact that the National Grand Theatre was funded by the state.

It is important to note that the controversial college admissions policy and discriminatory employment policy highlighted in these two cases are actually long-standing ones that had already been debated for quite a long time (Bie 2013; Yang 2011, 20). The lawsuits filed by PIL practitioners just brought these debates to the courtroom, which did not and could not further challenge the authorities.

### 3.1.4 Suing for Environmental Violations

Of these cases, 12.50% was involved in environmental issues. Since land, air and water pollution over years has already damaged the ecological environment and affected human health in China, it has become a severe problem that cannot be covered up anyhow. Thus, some lawsuits regarding environmental pollution were allowed to be registered in the courts, and even obtained favourable rulings for complainants.

Take the case of *All-China Environment Federation and Another v. Dingpa Paper Mill* (case 49) for example. The accusers sued a small, privately-owned enterprise for its discharging industrial wastewater into a river that resulted in water pollution. The plaintiff in *Chen Faqing v. Environmental Protection Bureau* (case 9) complained a county-level government watchdog for its failure to check local quarries that generated air and noise pollution in the town. The claimants in these cases concentrated on individual situation and requested to address local environmental pollution caused by privately-owned enterprises rather than challenging some state-sponsored large industrial and chemical projects. In other words, they are moderate in the eyes of both the public and authorities.

As argued by Fu (2011, 348), these litigation areas discussed above are generally “politically permissible within the authoritarian system and legally enforceable by China’s weak judiciary”. Most of them were economy-related issues so that litigants and their supporters did not have to worry about negative reaction from the authorities. Obviously, when PIL proponents pursue civil rights and social justice, it is a problem for the Party, but less so when they frame their grievance in economic terms. The authorities may not think it is necessary to silence public voices over these less politically sensitive issues, which leads to PIL practitioners tend to centre on these litigation areas in less hospitable legal and political environment.

### 3.2 Focusing on Less Controversial Cases

Another strategy utilized by PIL practitioners is to focus on less controversial cases because they are well aware that they are short of necessary resources to confront the powerful in the court. Thus, their chance mostly lies in apparent fault and wrongdoing their opponents have made. For this strategy, an interviewed lawyer put it this way:

Some government departments and officials never admitted they might do something wrong in their work. They always made up various excuses. Faced with this situation, if we file some lawsuits that can easily prove them wrong, they will be embarrassed (IC 21).

This standpoint was echoed by other interviewed lawyers and law scholars (IC 1, IC 5 & IC 11) who considered that it would be a short-cut to make some achievements otherwise they might encounter more obstruction. With this strategy, PIL litigants have lodged less controversial cases such as service providers failing to issue a receipt to consumers, or traffic police were keen to pursuing traffic fines rather than aiming at reducing traffic violations as discussed below. The fault on the side of the defendants in these cases was conspicuous so that it was not easy for the defendants to justify their acts and for the judiciary to make decisions favourable to the defendants.

#### 3.2.1 Asking for an Official Receipt

The first was the series of lawsuits of *Hao Jinsong v. Beijing Railway Bureau* (case 18, 22 & 25; Qin 2005). Between late 2004 and mid-2005, Hao Jinsong (郝劲松), a then law graduate student from China University of Political Science and Law, filed three lawsuits against Beijing Railway Bureau for its refusal to issue him official receipts on his purchases at the railway station and on the train.

According to Mr. Hao, when he requested a refund on his unused ticket at a ticket counter of the railway station, what he received was an informal receipt that was printed and circulated only within the railway enterprises instead of a formal receipt stamped by the tax authorities. For this reason, he could not get reimbursement of his travelling expense from a law firm where he did his internship. Other two disputes occurred on the train

where he was refused to be given official receipts after having a meal, or purchasing fruits and drinking water, although he repeatedly asked for them on the scene. Hence, Mr. Hao took the Beijing Railway Bureau to Beijing Railway Transport Court three times on the grounds that the defendant's acts were in contravention of the Law on the Protection of Consumer Rights and Interests (LPCRI).

The court ruled against him twice in a row, holding that he provided insufficient evidence that he had asked for receipts on the spot. Yet Mr. Hao did not give up his struggle as he believed he was on solid legal ground. In his third lawsuit, things finally turned in his favour in that the court made him a favourable ruling by ordering the defendant to provide him a receipt. Shortly afterwards, the Ministry of Railways issued the Notification about Providing Receipts to Passengers at Railway Stations and on Trains, requiring all its subordinate bureaus to provide railway passengers receipts after they have bought food and other items, which ended the history of no receipts on trains. Mr. Hao (Shi 2005) later commented on his series of lawsuits against the railway authority as follows:

I want to demonstrate the fact through my legal action that it is not only necessary, but also feasible to protect our rights and interests by using the law... These lawsuits were not just for several pieces of receipts, but for telling the public how to use the law for their rights.

Compared with other legal issues that concern the public, the claim in this litigation seemed trivial as the dispute was just over a receipt involving a small amount of money about which not many consumers would take it seriously and had ever gone to court before him. Yet Hao Jinsong held a different opinion. In his view, this small piece of paper really meant something because it was an acknowledged document proving the correlation between consumers and commodity or service providers. If some unanticipated disputes occur later, it can serve as the evidence presented in the court or relevant somewhere else. Moreover, an official receipt is also a voucher for both consumers and commodity or service providers to prove that they have paid taxes. Therefore, Mr. Hao concluded that if some commodity or service providers refuse to provide receipts to consumers, it is justified to suspect them of tax evasion.

Most important of all, Hao Jinsong invoked the law to buttress his accusation by arguing that receiving a receipt provided by commodity or service providers is consumers' legitimate rights guaranteed by law, because Article 21 of the LPCRI expressly prescribes as follows:

A business operator providing commodities or services shall issue a purchase or service voucher to consumers in accordance with relevant state regulations or commercial practices. A business operator must issue a purchase or service voucher where requested to do so by a consumer.

This stipulation emphasizes that issuing a purchase or service voucher is the obligation of a business operator instead of its privilege, which presented the plaintiff with solid legal basis to confront the defendant and won the case in the court. His effort and approach was also praised by Jeffrey Prescott (Mooney 2008), deputy director of the China Law Centre at the Yale University, who has suggested that this citizen legal action should be encouraged:

Lawyers like Mr Hao are trying to take the system seriously and to use it to promote the public interest. This is part of a bottom-up effort by citizens and lawyers to stand up for their own interests and for the public interest. It is an important part of the development of any legal system, and one that China should encourage.

It is true that Hao Jinsong as an ordinary citizen did everything he could to address the dispute through the law. Despite repeatedly taking the railway authority to the court, his litigation claim was trivial, just requesting the defendant to provide him with official receipts in accordance with law. The dispute in the case was less controversial because of a clear stipulation that if a consumer pays for something or some service, he or she is supposed to be provided with an official receipt to prove that he or she has paid for it. Evidently, this sort of litigation had nothing to do with politics. Therefore, his litigation application was accepted by the court which eventually made a judgment in favour of him.

### 3.2.2 Contesting a Ridiculous Traffic Ticket

However, if PIL litigants took a law enforcement agency to the court, what would happen? The sensitivity of the matter stems from the fact that law enforcement agencies in China are regarded as the major force of the political and law apparatus by the party-state and bear the main duty of preserving social stability. Thus, they are supposed to be unchallenged. Nevertheless, a litigation happened in Beijing where a migrant worker sued a traffic police detachment (Wang & Zheng 2005) presented an interesting perspective on how PIL targeted a law enforcement agency, but still received wide media coverage without offending the authorities.

Du Baoliang (杜宝良) was a vegetable peddler from Anhui Province who made a living by selling vegetables in Beijing. Early in the morning every day, he regularly drove his mini-van from home to his vegetable stall in a market. One day, he received a traffic ticket which notified him to pay a fine of ¥10,500 (€1,487) for making the same illegal turn past a no-entry traffic sign 105 times on his way to the market in less than one year between July 20, 2004 and May 23, 2005. His traffic violations over this period were recorded by an electronic monitoring device.

Mr. Du was shocked by the unexpected fine in that it was an astronomical sum for a peddler in a large city. After consultation with lawyers, he brought the Traffic Police Detachment of Xicheng District before Beijing Xicheng District People's Court in June 2005 for its failure to notify him in time about his traffic violations.

Du Baoliang submitted two pieces of evidences in the court. First, he claimed that the no-entry traffic sign located on the spot where he was photographed did not conform to the state standards formulated in the Mandatory Standards for Road Traffic that was jointly enacted by the Ministry of Public Security and the then Ministry of Transportation in 1999. Second, he had not received a written notice of his traffic violations for a long time, which was contrary to local government regulations. According to the Measures on Implementation of Road Traffic Safety Law enacted by Beijing Municipal Government, if vehicle drivers are recorded violating traffic rules but have not been penalized on the scene, the traffic management department shall notify the owner of the vehicle in writing.

Mr. Du alleged that he would not have broken the traffic regulations as many as 105 times if he had been informed earlier, for which the defendant should also bear its responsibility. He thus requested the court to order the defendant: (1) repeal this inappropriate penalty decision; (2) refund the unreasonable traffic fines he had paid; and (3) pay him ¥3,000 (€424) in compensation for the loss of his vegetable sales during the litigation. One month later, however, he withdrew the suit after Beijing Traffic Management Bureau claimed to have rectified its decision on him.

What was interesting about this case was that public opinion overwhelmingly sympathized the complainant despite of the fact that he was a traffic violator. At that point, vehicle drivers in Beijing had long been complaining about the way that traffic police enforced the law. If drivers were spotted breaching traffic rules by hidden cameras, they had to check their records at a local traffic police detachment office themselves or call a toll phone. As a result, some drivers often found that they were placed in the same situation as Du Baoliang in which they did not realize that they had already breached traffic regulations many times until one day they received a traffic ticket and had to pay a large amount of fines for their traffic violations accumulated in three months, six months or even a whole year. The issue at stake here was not about law enforcement itself, but the justifiable purpose and penalty procedure of enforcing the law.

Penalizing traffic violators is supposed to effectively implement traffic management and safeguard the life and safety of passers-by and drivers. According to common sense, once the police found that someone had violated the traffic regulations, they should have reminded and penalized the violators as soon as possible to ensure traffic safety. Nonetheless, the traffic police in this case were widely criticized for pursuing traffic fines rather than reducing traffic violations. As they failed to properly implement their duty, the traffic police actually put Du Baoliang, passers-by and other drivers on the road in danger many times over a period of almost a year.

The plaintiff in this litigation aimed to the law enforcement agency, complaining about its unreasonable traffic fines and law enforcement approach. The apparent fault or shortcoming on the part of the traffic authorities were unambiguous, but they could be viewed as technical issues that are different from being accused of, for example, police



corruption, police violence, or extra-legal detention. The latter are undoubtedly the matter of political sensitivity.

Put simply, in order to avoid confrontation with the authorities head on, but try to mobilize public opinion and solicit public support for their rights protection, PIL practitioners often choose to take less controversial cases exemplified in the two lawsuits elaborated above. By making use of this strategy, they have more chances to achieve their litigation goals.

### 3.3 Claiming Less Politically Sensitive Rights

As discussed in Chapter 1, in current political and legal situation under which stability maintenance is deemed to overwhelm everything by the authorities, Chinese litigants are not supposed to take politically sensitive lawsuits to the court because they may encounter unanticipated political and career risk.<sup>10</sup> Therefore, PIL practitioners are usually self-restrained in filing lawsuits.

Nonetheless, among PIL cases in this research, there were still a number of public interest lawsuits that seemed to touch upon some politically sensitive issues or topics, but were still allowed to be registered in the court as well as covered by the media even though the court decisions were not in favour of those plaintiffs. Why did courts register these thorny cases? How did PIL litigants take these lawsuits assumed to be sensitive to the court? Why were the media permitted to report these lawsuits without being “harmonized” (*hexie* 和谐)?<sup>11</sup> The answer to these questions lies in the third strategy that PIL proponents have adopted: claiming less politically sensitive rights in their litigation such as consumer rights or the right to equal education and employment, instead of right to freedom of association or right to freedom of expression. This strategy makes them relatively easy to get access to the judiciary and media exemplified by the following two cases.

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<sup>10</sup> For example, in recent years, a number of well-known lawyers such as Pu Ziqiang and Xu Zhiyong were disbarred, detained or arrested for their legal activism (Chin 2014; Jacobs & Buckley 2014; Jacobs & Buckley 2015).

<sup>11</sup> The word “*hexie*” is a frequently used net jargon in China in recent years, which means that media contents and public discussion online are censored and some assumed sensitive contents will be deleted by the censorship authorities under the slogan of the harmonious society.

### 3.3.1 Suing for Administrative Nonfeasance rather than Asking for the Right to Freedom of Association

The first case was *Dong Jian v. the Ministry of Health* (case 38; Yao 2007; “Dong Jian” 2006) in which Dong Jian (董坚), a retired cadre from a state-owned enterprise, took the Ministry of Health (MOH) to court for alleged administrative nonfeasance in February 2005. The plaintiff claimed that he intended to set up a CSO, but the MOH refused to respond to his application in writing as required by law.

For six years since 2000, Dong Jian, together with some other medical experts, had been applying to establish a CSO called “China Association of Loving Your Eyes” aiming to dissemination of information regarding eye health and the prevention of ocular diseases. In his litigation, Mr. Dong claimed that he had submitted nine applications in writing to the MOH in which there were necessary documents concerning office location, funding sources and other materials required by law and administrative regulations, but he received no formal response from the defendant who merely told him by telephone that the application documents were incomplete without detailed explanation. Thus, he accused the MOH of administrative nonfeasance for its violation of Article 32 of the Law on the Administrative Permission (LAP), which expressly states:

In case the application materials are not complete or not in conformity with legal format, the administrative organ shall tell the applicant once at the time or within 5 days to complete all contents to supplement. In case the administrative organ does not tell the applicant about it within the specified time, it shall be deemed as acceptance since the date of receiving the materials ... Either accepting or rejecting the application, the administrative organ shall issue written dated evidence with a special seal of the administrative organ on it.

By invoking this stipulation, Mr. Dong requested the court to order the defendant to perform its obligation to make a written response to his application. In its defence, the MOH claimed that it had not yet formally accept his application because the documents he submitted did not meet the requirements. Beijing No.1 Intermediate People’s Court

did not register the case until March 2006, more than one year after receiving the plaintiff's litigation documents. Nevertheless, the court dismissed his litigation application in December 2006, holding that his allegation was legally ungrounded. With regard to the argument by the plaintiff that the notification by phone call was inconsistent with the law, the court declined to comment on it.

Albeit this lawsuit being a failure for the plaintiff in the court, it still succeeded in terms of stirring up heated public discussion during the litigation. On the surface, the dispute of this lawsuit was over the administrative nonfeasance as the claimant complained that the defendant had been refusing to respond to his application for six years. At its heart, this litigation concerned whether citizens' right to freedom of association guaranteed by the Constitution is available in reality. It should be noted that this issue had already been addressed at the law level in that both domestic laws and international conventions acknowledge citizens' right to freedom of association.

As for domestic legislation, Article 35 of the Constitution 2004 proclaims that Chinese citizens "enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration". Article 1 of the Regulations on Registration and Administration of Social Organizations (SO Regulations) enacted by the State Council in 1998 also asserts that it will "guarantee citizens' freedom of association, maintain the legitimate rights and interests of social groups". With regard to international conventions, the Universal Declaration of Human Rights articulates in its Article 20: "Everyone has the right to freedom of peaceful assembly and association." Article 22 of International Covenant on Civil and Political Rights (the Chinese government has signed but not rectified it to date) also enunciates:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests.

These authoritative legal documents, nevertheless, still cannot guarantee that Chinese citizens can enjoy their right to freedom of association because of some visible or invisible obstacles. For instance, the SO Regulations set a number of stringent restrictions on registration of SO or CSO that make it very difficult, if not impossible, for citizens who

attempt to establish CSO. One of these restrictions is called dual registration procedure required by Article 3 of the SO Regulations, which specifies:

To become establishment, social organizations must be reviewed and approved by their competent business units and follow the registration procedure set out in these regulations.

In terms of this provision, a CSO must request an authorized unit as its supervisor responsible for checking its qualification and approving its application before being allowed to register at the Civil Affairs Department. This is why Dong Jian had to ask for the approval from the MOH. Without it, he could not have this proposed CSO registered. On the other hand, the SO Regulations do not specify corresponding conditions and time limits for the examination of application, which leaves room for supervisory units to accept or reject any application at their discretion, as MOH did in this case in which it claimed that the application documents did not meet the requirements, but refused to clarify how to meet the requirements. It is apparent that it was unwilling to approve this application, otherwise it would have told the applicant about needed documents. This lawsuit virtually reveals the true intentions of the Party which aims at restricting rather than encouraging the right to freedom of association. For this, Pei (2004, 26) has given an explanation:

Formally, some of these rights were re-granted or reiterated in the revised Chinese Constitution (1982) and in many other laws. Informally, the regime has significantly expanded certain individual rights (such as most personal freedoms), while severely restricting some of the most important political rights (such as the freedom of political speech and association). [Parentheses in original]

On the other hand, Chinese citizens aspire to exercise their right to freedom of association that is exhibited in the rapid growth of registered and unregistered CSOs. According to the official figures provided by the Ministry of Civil Affairs, as of the end of 2015, the number of registered CSOs reached 662,000 and the number of employees in these organizations exceeded 7.34 million (Ministry of Civil Affairs). In addition to the

registered CSOs, the number of unregistered CSOs was said to be far higher, at least three million (Xia 2011). Both registered and unregistered CSOs are engaged in various civic activities such as environmental protection, legal service, vocational education, rural development, etc., which have demonstrated the initiative and dynamics of civil society actors.

Against this background, it is further understood such questions as why Dong Jian insisted on establishing a CSO; why he failed to get his application accepted even though he had repeatedly made efforts to do so; and why the MOH reluctantly handled his application on the pretext of incomplete documents. As a commentary in *China Newsweek* (Yuan 2006) suggests that the key issue manifested in this case is citizens' right to freedom of association:

Despite having been applying for six years, the proposed China Association of Loving Your Eyes has still not received approval from the competent authorities, which reflected the helpless reality that thousands of Chinese social organizations have to face.

Since the right to freedom of association is a politically sensitive topic in China today, the complainant did not request the judge to examine whether the defendant violated his right to freedom of association. Rather, he sued the defendant for its non-response to his application, which fell under the category of administrative litigation. In such a way, he transformed a sensitive topic into an ordinary litigation that the court could accept, otherwise neither the court could have registered the case, nor could media have been allowed to report it.

### **3.3.2 Contesting a Non-Transparent Administrative Decision instead of the Publications Censorship Policy**

The second case related to this strategy was *Lin Lihong v. the Shenzhen Customs* (case 53; Jia 2013) in which the plaintiff unsuccessfully sued the defendant for alleged unreasonable administrative decision to confiscate her three books. This litigation concerned the overseas publications censorship policy.

In August 2011, when Lin Lihong (林莉紅), a Law Professor at the Law School of Wuhan University, returned to mainland China from Hong Kong, the Shenzhen Customs authority confiscated her three books purchased in Hong Kong. These books were *Sky Burial: the Fate of Tibet* (天葬: 西藏的命運), *My West China, Your East Turkestan* (我的西域, 你的東土), and *The River of No Return: Memoirs of Szeto Wah* (大江東去: 司徒華回憶錄). Ms. Lin protested against the customs officers on-site, but was rejected. Hence, she took Shenzhen Customs to court for alleged illegal confiscation of her personal belongings.

Lin Lihong contended that these three books were published by lawful publishers and sold at a lawful bookstore in Hong Kong Special Administrative Region of the People's Republic of China. Thus, they should be regarded as lawful publications. Moreover, she claimed that she had bought these books for her own reading and academic research as a scholar. She questioned the defendant by arguing that if she, as a university professor, was not allowed access to the books related to her research field, how could she conduct qualified research? In addition, she said that these books were her private property that should be protected by law. Based on these arguments, Ms. Lin requested the court to: (1) repeal the defendant's administrative decision to confiscate her three books; (2) return her confiscated books and make an apology; and (3) compensate her for personal property loss of ¥120 (€17).

The Shenzhen Customs defended its decision by arguing that it had a legal obligation to confiscate the books in accordance with relevant laws and administrative regulations because these overseas publications were unlawful in mainland China, but it did not provide details. In December 2011, Shenzhen Intermediate People's Court ruled in favour of the defendant, holding that the Shenzhen Customs' administrative decision to confiscate the books that the plaintiff brought from Hong Kong was lawful and appropriate under the law.

This litigation concerned China's overseas publications censorship policy under which the customs authority is empowered to inspect and confiscate at the border checkpoint any overseas books, magazines and newspapers that are deemed detrimental to Chinese politics, economy, culture and morality. In fact, this kind of censorship aimed to travelers, especially those who come back from Hong Kong, Macao and Taiwan, is not

something new to mainland Chinese who generally take it for granted, although they may occasionally complain about it. The dispute in the lawsuit was not focused on this policy per se, but on whether the decision to confiscate those books was justified.

There is little doubt that the Shenzhen Customs is empowered to check and confiscate assumed illegal overseas publications. According to an article in *Southern Weekly* (Yang 2009), the customs authority has a prohibited publications directory issued by its superiors or a certain unknown authority. If they are suspicious of some publications, they would input the title of those publications into the computer to check against the directory. The crucial issue here is that this prohibited publications directory is intended for internal use only without being open to the public, which led to its legitimacy questioned by the plaintiff.

In the view of Lin Lihong, such administrative decision was questionable because it is in conflict with the principle of administrative transparency and openness. Under the rule of law, she argued, any law or administrative regulations that concerned the public should be published or disclosed in advance so that citizens have clear idea of what they are permitted to do. Then they should be responsible for what they are about to do. She has a point here. As for this case, if the information about banned books had been made public, Ms. Lin who had brought these books into the mainland China might have been responsible for her act. Nevertheless, if this information had never been open to the public, it was unreasonable to punish her because of an apparent fact that she did not have any idea of what kind of publications she could bring or could not bring with her into mainland China from Hong Kong.

As the first person in China to question the decision made by the customs authority for her rights in the court that drew widespread media coverage, Lin Lihong did not directly challenge the overseas publications inspection policy which would have been politically sensitive. Rather, she chose to make her complaint on the non-transparent and unfair administrative decision leading to her personal property loss, which was still within the boundaries the Party can tolerate.

Both of these lawsuits discussed above actually concerned citizens' political rights that normally could not be accepted by the court, but the two complainants still managed to

take them to court, because they did “wrap their resistance in sweet reason and tender impeccably respectable demands” (O’Brien & Li 2006, 7). O’Brien and Li (2006, 38-39) have suggested that successful rightful resisters must blame their troubles on misconduct by local officials instead of the party-state. Similarly, PIL practitioners also need to blame their troubles and file complaints on wayward local government or lower-level officials for their misconduct or misinterpretation of central government’s policy, which would make their litigation possible. As Ho (2008, 8) notes: “as long as you don’t openly oppose the central state, many things are possible in China.”

Instead of arguing the case on constitutional grounds, Dong Jian charged the defendant for its administrative nonfeasance, whereas Lin Lihong framed her legal argument in personal property loss caused by the opaque law enforcement of the customs authority. As these accusations were not involved in sensitive issues, these two litigants had some room for manoeuvre even in an unfavourable legal situation. In doing so, they virtually brought some sensitive topics into the limelight and showed the public how to venture into uncharted sensitive territory in a tactical way. It could be inferred that if they had claimed their political rather than consumer rights, or had they complained about the policies leading to their trouble in the first place instead of challenging the approaches that the defendants implemented these policies, their lawsuits would not even have had chances to be registered in the court.

In the same vein, some other lawsuits discussed in Chapter 2 like *Jiang Yan and others v. the Ministry of Education* and *Huang Yuanjian v. the National Grand Theatre* also illustrate this self-restraint strategy. It is well known that the root cause of the education and employment discrimination those complainants suffered comes from the household registration system, which they did not challenge. Instead they complained disputable administrative decision over the university admissions quota designated in different regions as well as the employer who barred non-locals from seeking jobs. In other words, they lodged those suits that could be judicially challenged and politically tolerated. Such cautiousness can be called “self-imposed censorship” and “a conscious depoliticization of politics” (Ho 2008, 11-12). An interviewed law scholar also held this opinion: “PIL practitioners take advantage of certain political leeway for rights claim while respecting the current political space” (IC1).



### **3.4 The Authorities' Response to PIL**

The growing PIL cases in recent years have displayed that Chinese citizens are putting more pressure on the authorities for rights protection, social justice, government accountability and public participation. Meanwhile, they have cautiously framed their litigation claims and objectives within the boundaries that the authorities can tolerate, which is epitomized by the non-confrontational strategies discussed above. In the words of Froissart (2014, 2), they “tend to use law as a ‘harmonious weapon’” [quotation marks in original]. Such moderate nature of PIL constitutes an important component of this form of citizen resistance.

However, no matter how moderate or harmonious PIL looks, such citizen legal action still challenges the authorities and vested interests that the Party does not countenance because “taking the Party at its word and taking the law seriously are still deemed an intolerable challenge to the Party’s authority” (*ibid*). In this setting, it is intriguing and meaningful to look into how the party-state deals with PIL. Broadly speaking, the Party has expressed paradoxical attitudes toward PIL, which leaves some avenues open for PIL proponents, but restricts this citizen legal action in one way or another, and even keeps a watchful eye on it.

This response model can be called “differentiated controls” by the state (Kang & Han 2005). According to Kang and Han, under current changing state-society relations, the government exerts different strategies to control different types of social groups in light of their capability to challenge the state and the public goods they provide. This observation can be used to examine the ways that the party-state addresses PIL, which will be presented in the following three sub-sections.

#### **3.4.1 Leaving Some Avenues Open for PIL Proponents**

Examining the practice of PIL and the authorities’ response to it these years, we can see some positive signals manifested in a number of high-profile public interest lawsuits that obtained favourable rulings for claimants or reached a settlement in favour of both parties, as well as PIL clause that is added to the amended Civil Procedure Law. That is to say, the party-state has mostly tolerated PIL until now.

For instance, in the series of lawsuits of *Hao Jinsong v. Beijing Railway Bureau* which concerned consumer rights, although the plaintiff lost twice in the court, he finally received a favourable decision and realized his litigation goal. In another case of *Li Yan v. the Ministry of Education and Others* which referred to government information disclosure, the complainant eventually obtained the requested information from three cabinet-level government departments through a court-mediated settlement. Moreover, concerned government agencies and state-owned monopolies occasionally made certain adjustments in their disputable decisions or policies in the wake of some lawsuits. In the case of *Du Baoliang v. the Traffic Police Detachment* regarding the way that police enforced the traffic law, the plaintiff withdrew his lawsuit halfway, but Beijing traffic management authorities still announced a number of reform measures to improve traffic management and law enforcement.

Additionally, the amended Civil Procedure Law in August 2012 was added a PIL provision that permits government agencies and concerned organizations to sue for the public interest relevant to environmental pollution and consumer interests. This new development is an encouraging signal for PIL proponents in that PIL has been officially recognized as an institutional channel that can be used to address some social problems and seek judicial redress.

A likely explanation of the Party's tolerance of PIL is that PIL practitioners do not challenge the current system and the authorities on the political level. They just request for better governance, fair and equal treatment, and more public participation. These humble and less political demands leave room for negotiation between the state and civil society. In the face of increasing social tension and conflict, the primary concern of the party-state at present is to preserve social stability for which it hopes that aggrieved people will make their discontent and grievances in controlled channels like the judicial system, rather than take to the streets. Thus, it does not reject PIL as O'Brien and Li (2006, 15) have noted:

Their claims do not always fall on deaf ears because some members of the elite believe that offering redress may help placate the discontented and reduce the likelihood of unrest while improving policy implementation and cadre oversight.

In the meantime, PIL may benefit the authorities on some other ways. For example, a number of long-standing social problems and controversial public policies manifested in public interest lawsuits can alert and urge the Party to re-examine its policies and make certain adjustments in time to mitigate social contradictions and reduce public disquiet. This is what Teets (2014, 2) has mentioned:

[...] civil society generates reliable information about citizen dissatisfaction that authoritarian states are unable to access through formal institutions, and it meets these demands through social innovation, thus improving governance and increasing satisfaction with the regime.

### **3.4.2 Restricting Spontaneous Citizen Legal Action**

While the Party does not regard PIL as a direct threat to its one-party rule, it is still wary of this spontaneous citizen legal action that may encourage more people to stand up for their rights that is in conflict with the Party's interests as aforementioned. Therefore, it does not countenance PIL and even restricts it in a variety of ways. As an article in *The Economist* (NGOs in China 2015, 12) remarks on why the Chinese government detained five feminists who were trying to campaign against sexual harassment on public transport in April 2015:

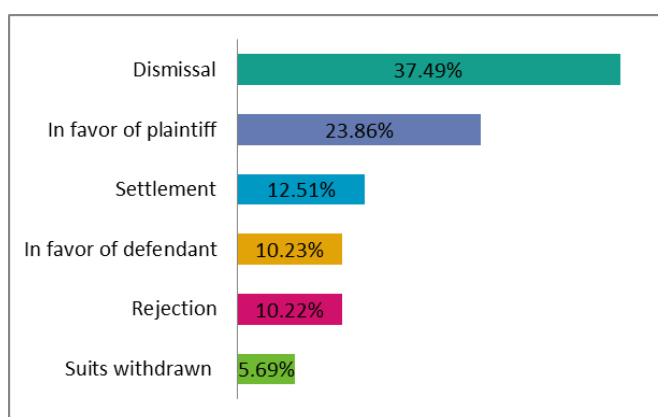
This was not because China's leaders believe that groping is a good thing, or that it is acceptable if perpetrated on public transport. It was because the Communist Party is wary of any organization it does not control.

This article has a point when it comes to the Party's motive. In general, feminists doing campaign against sexual harassment does not offend the authority of the Party. Conversely, they may help mobilize public attention on gender equality and respect for women. The Party is surely aware of it. Nonetheless, it inherently resists any spontaneous civil society activities out of its post-totalitarianism feature. In the same vein, the civil rights and social justice that PIL proponents pursue is not something that the authorities favour because many social problems that the public are concerned are deeply rooted in the one-party system. For instance, PIL practitioners want to voice for disad-

vantaged groups, but vulnerable people's rights and interests are mainly violated by public power and vested interests as mentioned in Chapter 1. In a sense, suing for vulnerable people's rights or complaining about injustice and inequality is equivalent to criticizing and blaming the Party, which may result in overreaction from the authorities. An interviewed local judicial official put it this way:

Why are lawyers interested in filing lawsuits against government departments? In such a large country with a huge population, it is inevitable for the government to make some faults, but the government serves the people. So they should put forth some constructive opinions and suggestions rather than going to court (IC24).

**Figure 3.2: Disposition of PIL Cases by Courts 1996-2012 (n=88)**



The restriction on PIL can be examined from three aspects. First, as discussed in Chapter 1, the current judicial system does not encourage citizens to file lawsuits on behalf of the public interest by placing tight restrictions on the litigation standing, nor does it permit citizens to question and challenge the government by confining litigation to “concrete administrative acts”. Such non-support attitude has led to an inactive judiciary that is manifested in Figure 3.2 above, showing that 47.73% of litigation applications were either rejected or dismissed at the case filing stage on the grounds that they lacked substantial standing, there was insufficient evidence to support litigation claims, or the claims went beyond the court's jurisdiction.

Second, this non-support attitude can also be confirmed in the comparison between the Environmental Protection Law (EPL) 1989 version and the EPL 2014 amended version as the former encourages citizens to go to court to seek judicial redress, while the latter stresses problem solving through administrative channels. Article 6 of the EPL 1989 version prescribes:

All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.

This stipulation emphasizes that “all units and individuals” have the right to file lawsuits regarding environmental pollution and damage, but the EPL 2014 version changes its position from encouragement to discouragement. It not only eliminates the expression about “shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment”, but also further confines citizens’ complaints to administrative channels in its Article 57:

Citizens, legal persons and other organizations shall be entitled to report and complain about the environmental pollution and ecological damage activities of any units and individuals to competent environmental protection administrations or other departments with environmental supervision responsibilities.

In the event the local people’s government and its environmental protection administrations or any other relevant departments failing to fulfil their responsibilities in accordance with the law, any citizen, legal person or other organizations have the right to report it to the competent higher level governments or the supervisory department according to law.

The provision here reiterates that citizens can report environmental violations to the government and its environmental protection administration. It is apparent that the authorities prefer to let aggrieved citizens to make environmental complaints within the administrative framework rather than let them to go through the judicial system, which

reveals the true intention of the authorities, i.e., limiting public participation instead of encouraging people to seek justice through the law and judicial system.

Third, claimants of PIL find it difficult to win in the courts due to some visible and invisible obstacles, which are manifested in the disposition of PIL cases by courts in Figure 3.2. At first glance, the proportion of court rulings favourable to plaintiffs (23.86%) was higher than defendants (10.23%), but given that a high percentage of lawsuits (47.71%) had already been excluded from the outset at the case filing stage, defendants who were mostly government agencies and state-owned monopolies virtually enjoyed a nearly three-to-one (57.96% to 23.86%) advantage over their opponents, without counting suit withdrawal and settlement rate.

### **3.4.3 Keeping a Watchful Eye on PIL**

In fact, the party-state not only restricts PIL, but also suppresses PIL activists occasionally whenever it considers it necessary. As there is no clear demarcation line that can be gauged as aforementioned, it is almost impossible for PIL practitioners to fully perceive where the boundary is drawn. In the course of charting a previously unknown path, they may step over the red line at one point without realizing it, because only the authorities have the final say as to what kinds of lawsuits are within or beyond the boundary. As Fu and Cullen (2009, 28) have remarked: “In an authoritarian state, the line between what is permissible and what is prohibited is blurred and unpredictable.” This assertion about authoritarian regimes is also applicable to post-totalitarian regimes. The following two cases accentuate on how such vagueness led to unanticipated consequences for PIL proponents.

The first case refers to the prominent Open Constitution Initiative (OCI, 北京公盟咨询有限责任公司), a Beijing-based legal CSO whose slogan is “For public welfare, citizen action, constitutional China” (“public welfare” 2006). It was established in 2003 by three young law scholars who first attracted public attention in the same year, when they submitted a proposal calling for the Standing Committee of the National People’s Congress to review the constitutionality of the Urban Vagrants and Beggars Custody and Repatriation Measures (城市流浪乞讨人员收容遣送办法) enacted by the State Coun-

cil in 1982 after the Sun Zhigang incident.<sup>12</sup> This administrative regulation empowered the police to detain people who did not have an urban residence permit or temporary residence permit, and return them to where they came from (Tang 2003).

These law scholars' petition, accompanied by the joint efforts of media and the public that overwhelmingly sympathised the victim and demanded justice, eventually led to the State Council announcing the abolition of this notorious policy in June 2003. After that, the OCI had been engaged in PIL-related legal aid and research. Nonetheless, it was charged with evasion of taxes by the tax authorities in July 2009. Xu Ziyong (许志永), the legal person of the OCI was detained for more than one month at that time. In September 2009, the OCI was disbanded. The precise reason behind it was unclear, but it was likely that some of its activities were beyond the boundaries that the authorities can tolerate.

One of these notable activities occurred in September 2008. When the scandal of the melamine-tainted infant formula made by Sanlu Dairy Corporation which added melamine, a poisonous chemical substance, into its infant formula products, was made public, the OCI actively offered legal aid to the victims. Such legal assistance included assembling a temporarily loose-knit voluntary legal team composed of over 100 lawyers to provide legal services in relevant provinces where they are located; setting up a hotline for the affected children and their families; and representing 63 victims to lodge a class action at Hebei Provincial Higher People's Court, which was, however, rejected ("sanju qingan" 2012).

This sort of litigation about consumer rights is usually less politically sensitive. Nevertheless, given that tens of thousands of infants fell ill throughout the country, 13,000 of them had to stay in hospital for treatment, and at least four of them died, the authorities had regarded it as a sensitive issue that might endanger social stability (Qi 2008). Therefore, lawyers were not allowed to act as proxy for the victims of this scandal under official pressure (*ibid*).

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<sup>12</sup> Sun Zhigang (孙志刚) was a young man just graduating from college and working in Guangzhou, Guangdong Province. In March 2003, as he did not have a Guangzhou temporary residence permit with him, he was put in a detention centre and beaten to death,

In addition to this case, the OCI also helped other aggrieved individuals such as Deng Yujiao (邓玉娇), a 22-year old waitress who stabbed a local government official in self-defence when he tried to rape her (He 2009) and Yang Jia (杨佳), a 28-year-old man who killed six police officers with a knife due to allegedly being tortured at the police station for riding an unlicensed bicycle (Fan 2008). These two incidents at the time sparked widespread public outrage towards the authorities because they covered up the information about the incidents and those officials involving abuse of power. Consequently, these two cases turned out to be politically sensitive. Therefore, any lawyer or CSO standing up to provide legal aid to Deng Yujiao and Yang Jia was considered to challenge the authorities.

As for Xu Zhiyong, one of the OCI initiators, after being released he continued to engage in such civic activities as advocating for migrant workers children's equal right to education in cities where they live and asking for government officials' assets disclosure. In January 2014, he was sentenced to four years for alleged disturbance of social order (Jacobs & Buckley 2014).

Another case concerned the closure of a university-based legal CSO, the Centre for Women's Law Studies and Legal Services (WLS Centre, 北大妇女法律研究与服务中心). As the first Chinese CSO which concentrated on offering legal assistance to women, the WLS Centre was established in 1995 and affiliated to Peking University Law School. In March 2010, its supervisory unit, the Law School, declared to sever its ties with the WLS Centre. This unexpected move meant that the WLS Centre lost its institutional shelter, so it would have to seek another supervisory unit if it tried to continue its undertaking under the SO Regulations. Otherwise, it would be regarded as an illegal organization.

As a women's rights advocacy and legal aid CSO, what the WLS Centre had done seemed not to offend the authorities as the OCI might have done. The lawsuits it lodged or represented, so to speak, were mostly involved in gender discrimination and women's rights protection that many women often encounter in their daily life without touching politically sensitive cases, such as disputes over the retirement age of female teachers, sexual harassment, domestic violence, and the land rights disputes of married-out rural women. In other words, the WLS Centre should not have become the authori-



ties' target in light of its litigation areas and litigation claims. The likely explanation is that the party-state objects to any citizen legal action for social justice and rights protection regardless of individuals or CSOs, because all these citizen legal actions may help increase citizens' legal and rights awareness as well as further encourage more rights claims from civil society that the Party does not favour.

Under the circumstances, PIL proponents have cautiously engaged in PIL and depoliticized their litigation as much as possible. Nevertheless, in a highly politicised society, any litigation may be interpreted as having political implication by both the state and civil society. Going back to the case of *Dong Jian v. the Ministry of Health* discussed above. While the litigation claim did not mention political demand, the key issue of the litigation was absolutely related to citizens' political rights. In this respect, it is of course a challenge to the Party. With reference to this challenge from civil society under the Communist regime, Vaclav Havel (1985, 30), a well-known Czech writer, dissident and statesman, made an insightful comment:

Anything which leads people to overstep their predetermined rules is regarded by the system as an attack upon itself. And in this respect it is correct; every instance of such transgression is a genuine denial of the system.

In light of this standpoint, the party-state has reason to be wary of citizen activities including PIL, no matter how moderate and self-restrained they are. Indeed, PIL is not only for rights protection on a legal level, but also a potential challenge to the Party on a political level in some ways. Starting from PIL, a number of PIL advocates, in the words of Fu and Cullen (2009, 27), "gradually realized the limits of a case-centric approach and legislative lobbying, and, in the end, became interested in political participation." For example, Hao Jinsong, who filed a series of lawsuits aiming at the railway authority, ran in a local people's congress election in 2006, but failed. Xu Zhiyong, who was among three law scholars to call for a constitutional review of the custody and repatriation system in 2003, initiated the New Citizens Movement to call for civic spirit consisting of freedom, justice and love in 2009, as well as pushing for equal access to education rights for the children of migrant workers by collecting signatures and organizing petitions.

In brief, the party-state has expressed a complex and contradictory attitude towards PIL. It is tolerant of PIL as a whole due to its benign nature, but is unwilling to encourage citizens to question its policies and authority by means of this legal action. It deems legal activism including PIL as a threat, but tackles PIL with different tactics at a given time and situation. It tries to take advantage of PIL for its goal, but restricts its development and influence.

### **3.5 Concluding Remarks**

It goes beyond doubt that PIL proponents try to put public power and vested interests under the supervision of the law as well as advance their rights enshrined in law through this type of litigation. However, this does not mean that they intend to engage in open defiance of the authorities, because they are aware of the flaws of the judicial system, the limits of PIL and the boundaries that the CCP can tolerate. As Andersen (2005, 8) has noted:

[...] the mechanics of the judicial process shape access in a number of important ways, including what may be litigated, who may litigate, and where such litigation may occur.

It is this political and legal reality in China that has shaped PIL practitioners' strategy and tactics while taking such citizen legal action, which was illustrated in their non-confrontational strategies such as restricting their litigation to less politically-sensitive areas, paying attention to less controversial cases, and claiming less politically-sensitive rights as aforementioned, although they varied in relation to the cases and issues involved. In this way, they have secured certain room for their rights protection and other related activities.

On the other hand, the Party shows its ambivalence toward PIL. While this grassroots legal action is moderate and self-constrained, it still challenges the Party's authority in a number of aspects such as advocating rule of law and social justice, criticizing unfair public policies and abuse of office. Thus, the CCP does not encourage PIL and even keeps a watchful eye on it. Nonetheless, as PIL may help channel aggrieved citizens' complaints and grievances into the judicial system that is conducive to social stability,

the authorities have tolerated this type of litigation and occasionally satisfied or partially satisfied PIL practitioners' rights claims illustrated in a few cases discussed in this study.

In summary, by making use of the rule of law discourse in the restrictive political environment, PIL proponents in China have energetically engaged in this legal action to claim their legitimate rights and make their voices heard. To put it another way, they employ a legal instrument acknowledged by the authorities to fight against rights violations. In the meantime, they have done everything possible to avoid the authorities' backlash. This leads to the theme of the next chapter: seeking a compromise in a number of high-profile public interest lawsuits has become an accepted approach for concerned parties at times.

## Chapter 4

### Seeking a Compromise in PIL

[...] in taking legal action, a different type of audience must be addressed, different tools must be employed, and a different language must be adopted.

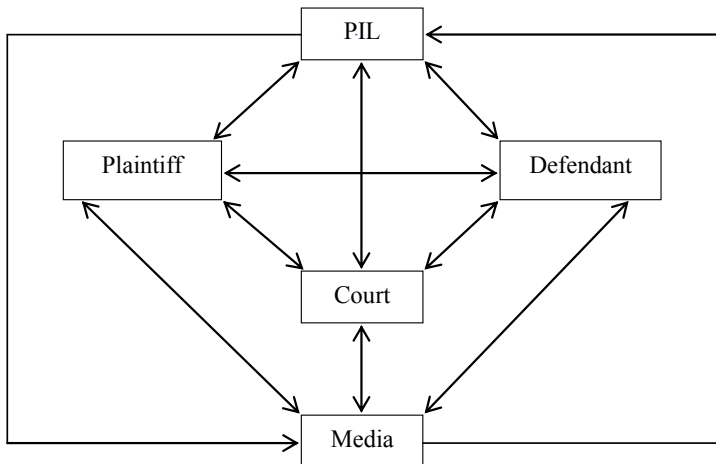
— Lisa Vanhala (2011, 12-13)

As a litigation instrument favoured by public-minded citizens, PIL aims at mobilizing public opinion to exert pressure on the government and state-owned monopolies for rights claim and policy adjustment. These objectives concern the bargaining process between PIL actors. With reference to concerned parties in PIL, Abram Chayes (1975-1976, 128) has suggested: “the party structure” in PIL “is not limited to individual adversaries, but is sprawling and amorphous.” In other words, a lawsuit with a public interest nature may involve multiple parties instead of just two direct parties seen in conventional litigation. Given this point of view, PIL actors in China are at least composed of four parties: plaintiff, defendant, court and the media as shown in Figure 4.1 below.

Of these concerned parties, plaintiffs are normally powerless individuals and legal CSOs which have less bargaining chips, whereas their opponents which are often government agencies and state-owned monopoly enterprises have overwhelming advantages in terms of power, influence, and available resources related to litigation. Another important actor in PIL — the court generally stands in the shoes of those powerful defendants, but it also has to balance the interests of two litigating parties at times, especially when claimants have solid legal grounds. As for the media that are not supposed to be a party in a lawsuit, their coverage of on-going lawsuits would inevitably influence public opinion through which may generate pressure on one party and encourage another party. Therefore, they should be considered as a relevant actor in PIL in China.

At the same time, as Figure 4.1 illustrates, these concerned parties in PIL do not have a hierarchical relationship, but interact with each other in the process of PIL. Any decision or action from one party or parties may influence the decision or action of another party or parties, and even result in different litigation outcome. Put simply, all these parties including plaintiff, defendant, court and media are either proactively or passively involved in PIL.

**Figure 4.1 Relationships among Concerned Parties in PIL**



After examining the strengths and weaknesses of plaintiffs and defendants in PIL, this chapter discusses three approaches that the judiciary uses to deal with PIL. It then explores how the media affects concerned parties in PIL. Based on the analysis of their dynamic interaction around litigation, the study suggests that sometimes seeking a compromise has become an accepted approach for both plaintiffs and defendants to resolve disputes in some high-profile public interest lawsuits.

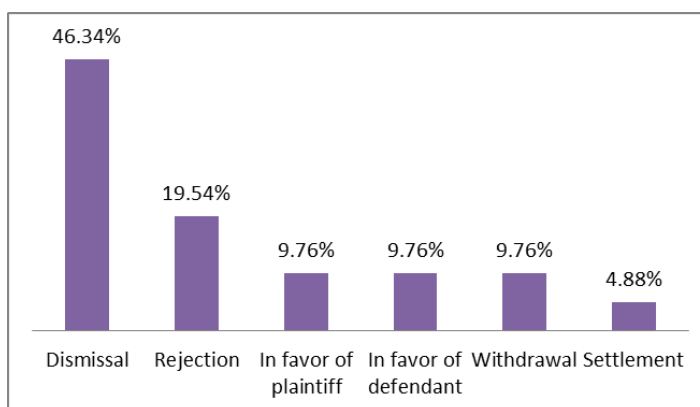
#### **4.1 Vulnerable Plaintiffs in the Courts**

Winning a court case depends upon multiple elements, but one important element is the strength comparison between two concerned parties. If one party falls short of necessary resources, power or influence, it is usually difficult to win in the court. This is the case even under an independent judiciary, let alone in China where the judiciary is actually regarded as a department of the administration. In this sense, the vulnerability of PIL plaintiffs is conspicuous.

#### 4.1.1 Unbalanced Strengths between Two Litigating Parties

By and large, there is imbalance in the strengths of two litigating parties in PIL. The PIL plaintiffs are mostly individuals including lawyers, law scholars, university students, consumers, peasants, and disabled persons as displayed in Table 1.1. These plaintiffs obviously have little recourse for their complaints. On the other hand, however, their adversaries are government agencies, state-owned monopoly enterprises, privately owned companies, cultural, educational and health institutions, and Sino-foreign joint ventures as shown in Figure 1.3. They are undoubtedly powerful in terms of power and resources. Hence, the two sides in most public interest cases formed a stark contrast just like David and Goliath.

**Figure 4.2: Disposition of PIL Cases Targeting the Government 1996-2012**  
(n=41)



In the case of *Du Baoliang v. the Traffic Police Detachment*, for instance, the claimant was a migrant worker who made a living by selling vegetables in Beijing where he was a member of the underclass. In contrast, his litigation opponent was a powerful law enforcement agency. The complainant in *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China* was an ordinary journalist, while his opponent was the largest commercial bank in China and one of the Forbes top 10 companies in the world. In another case of *Li Yan v. the Ministry of Education and Others*, the plaintiff was a university graduate student, whereas her adversaries were three cabinet-level government departments. It is clear that PIL practitioners like them have little resources needed for litigation, and their capabilities to use the law to defend their rights are also con-

strained as described in the preceding chapter. Thus, they are often placed in an unfavourable position in the courtroom, which were exhibited in the disposition of PIL cases targeting the government in Figure 4.2 above.

An analysis of 41 PIL cases aimed at the government indicates that 67.5% of litigation applications were either dismissed or rejected. If adding another 9.76% of cases that were ruled in favour of the government to the figure, the total percentage of those favouring the government increased to as high as 77.26% excluding the ratio of case settlement and withdrawal. Of all these cases, only 4 cases, less than 10%, obtained favourable rulings for PIL plaintiffs.

It is worth to note that even among these four successful lawsuits, there was one (case 61) which was filed by the All-China Environment Federation, a government-organized CSO based in Beijing under the Ministry of Environmental Protection. In this case, a county-level environmental protection bureau was accused of its failure to provide government information about a local factory involved in environmental pollution. Despite the fact that it was conducive to promoting government information disclosure and tackling environmental pollution, it still looked like a litigation show in which a quasi-superior government institution reproached its subordinate department as mentioned earlier.

Seen from Figure 4.2, it is difficult for PIL litigants to win lawsuits involving the government as a litigating party under the current judicial system, which normally tends to favour the powerful including the government and vested interests (also see Tong & Bai, 2005, 141). Hence, in some cases, PIL practitioners had to make concessions by accepting the settlement or withdrawing their suits instead of continuing their litigation, even though they did have sufficient legal evidence, which is illustrated in the following two cases.

#### **4.1.2 The Reluctant Withdrawal of Suit**

In a lawsuit accusing three cabinet-level departments of government information non-disclosure initiated by Li Yan discussed in Chapter 2, the complainant took these government departments to court after repeatedly requesting information in vain. As a university student confronting bureaucracy, she considered it her last chance to obtain the

requested information through the judicial process. Nevertheless, Ms. Li never thought of winning the case in the courtroom, because she knew as a law student that the court could not simultaneously put three cabinet-level administrative agencies on the losing side of the litigation, although these government departments should have unconditionally disclosed the information as required by the OGI Regulations. She was even not sure whether the court would accept her litigation application or not as she (Zhang 2011) said in an interview:

It does not matter whether the court makes a judgment favourable or not favourable to me. As long as it can accept my litigation application, and these government departments can disclose the requested information, I will withdraw the suit.

By the due date of registering or rejecting her litigation application, the court still had not responded to her. Obviously, it had not yet decided how to handle this case, which was inconsistent with relevant stipulations in that both the ALL and the CPL set a time limit for the court to either register or reject litigation application. Article 42 of the ALL enunciates:

When a people's court receives a bill of complaint, it shall, upon examination, file a case or make a ruling not to accept it *within seven days* [emphasis added].

In the same way, Article 123 of the CPL also expressly prescribes the same time limit as seven days for either registering or rejecting litigation application:

If the lawsuit meets the requirements for acceptance, the people's court shall place the case on the docket within seven days and notify the parties concerned. If it does not meet the requirements for acceptance, the court shall, *within seven days*, make an order to reject it [emphasis added].

One week after the due date, the court called in Li Yan and suggested she discontinue her lawsuit. It told her that it might register the case for some reasons, but might also



reject it for some other reasons (Ye 2011). To put it another way, the court virtually implied that any decision it would make was justified under the law. Thus, the claimant faced with a tough decision: either continuing her litigation or quitting the suit. Both of these two choices had advantages and disadvantages.

Undoubtedly, Li Yan had solid legal basis in this case because it was apparent at the legal level that what her three opponents had done was incompatible with the OGI Regulations. Meanwhile, her legal action asking for government information openness made headlines. However, she had to consider the court's attitude as its suggestion was almost equivalent to an implicit warning: the court would not support her claim if she went through with her litigation. In this situation, making a concession was a reasonable choice for Ms. Li, otherwise she might have faced with more pressure or her litigation application could have been dismissed. Therefore, she agreed to quit the litigation, but asked the court to urge the three government departments to disclose the requested information, which in effect implied that she would consent to the court-brokered deal if her opponents provided her information. Yet if they failed to do their part, she might not withdraw the lawsuit.

In doing so, Li Yan partially realized her goal of obtaining the government information she requested even though it did not meet her initial expectation to have a trial through the regular court procedure because she should have won the case if it went to trial.

#### **4.1.3 An Alternative Choice**

Another case was *Song Dexin v. Henan Provincial Expressway Development Co., Ltd.* (case 22; Chen 2005) in which a doctoral student from the Renmin University of China sued the defendant for alleged breach of the expressway contract, which made him pay the expressway toll without enjoying the corresponding service. This case also displayed that the plaintiff had few choices in the face of a powerful opponent so that he had to accept a settlement.

Song Dexin (宋德新) in his proceedings claimed that he made an appointment with a county government agency, so he drove his car onto the expressway operated by the defendant with vehicle toll of ¥30 (€4.25). Under normal circumstances, the maximum

speed on the expressway is 120 km/h. However, as there were roadworks at six points on the expressway that was less than 60 kilometres long, he could only drive at a speed of between 20 and 40 km/h. By the time he arrived at the destination, he had missed the scheduled meeting. Thus, Mr. Song brought the defendant before the court and asked for its apology and compensation of ¥10 (€1.42).

In the first instance, the court dismissed his litigation application on the grounds that the defendant had not violated the relevant law and regulations because expressway maintenance was regular work to ensure road safety. The complainant refused to accept the verdict and appealed to Zhengzhou Intermediate People's Court. During the litigation process, the case drew the media and public attention. The court persuaded the two parties to reach a settlement: the defendant apologized to the plaintiff for the inconvenience caused by the expressway maintenance, while the plaintiff waived the compensation claim.

The plaintiff could have insisted on his litigation as he had legal basis that supported his claim. The regulations on the Henan Province Expressway explicitly stipulate that if a concerned authority finds that the traffic situation on the expressway severely affects the normal passage of vehicles, it must suspend collecting tolls and inform the public. In terms of this provision, it was obviously unreasonable to charge drivers as usual given the fact that as many as six places on the expressway were being maintained. Nevertheless, the plaintiff still agreed to accept the court-mediated settlement as this was his preferable option. The defendant was a state-owned enterprise in charge of the construction of expressways and collection of tolls throughout Henan Province, which meant that it possessed considerable power, resources and influence under the jurisdiction of Henan Province.

The plaintiffs in these two cases who were university students were unexceptionally vulnerable individuals in the courts, but their adversaries were central government departments and the state-owned monopoly. Based on the calculation of opportunities and costs, they all accepted the settlement offered by the court after partially achieving their litigation goals. Such compromise demonstrates the flexibility of PIL plaintiffs who, even though the law is on their side, are willing to make concessions to resolve disputes

after defendants have adjusted or promised to adjust their controversial decisions or policies. As Palmer (2014, 112) has pointed out:

[...] the plaintiff might consent to the administrative conduct that created the grievance and claim, but secure certain concessions from the defendant that bore no direct relationship to the claim per se.

It is quite clear that given the reality of strong government and weak society in which if the government persistently refuses to respond to the demands of civil society, no other forces, regardless of the judiciary, media or public, can do anything about it. In this situation, making a complaint to pressure defendants to make some concessions without going to trial is a pragmatic option for PIL practitioners at the moment as noted by Minxin Pei (1997, 843):

[...] filing a suit to induce the government agency to change its actions before trial has about the same probability of obtaining effective relief as filing the suit and receiving a favourable ruling after trial.

The inclination of PIL practitioners to seek a compromise in dispute resolution can also be seen in Figure 4.1, which displays that accepting settlement and withdrawing suits by plaintiffs accounted for 14.64% in PIL cases targeting the government. Similarly, Figure 3.2 also shows that the settlement and withdrawal rate among total PIL cases reached 18.2%. In other words, a considerable number of PIL litigants were willing to seek compromise in their lawsuits. As for this option, a PIL practitioner regarded it as a pragmatic approach in the interview:

Maybe we have abundant legal evidence, but we have nowhere to argue because we are weak in confronting our opponents. Therefore, filing a lawsuit to draw public attention and then quitting it after defendants make some concessions is a feasible option. After all, achieving something little is still better than nothing (IC17).

## 4.2 The Weaknesses of Powerful Defendants

As noted above, in relation to vulnerable plaintiffs in the courts, most defendants in public interest lawsuits are government agencies and state-owned monopoly enterprises with power and resources that can influence the judiciary and litigation outcome in one way or another. Nonetheless, this advantage does not mean that they can do whatever they want at their discretion because of the facts that these powerful defendants in most cases fall short of solid legal grounds in the court and moral grounds in the eyes of the public. These weaknesses concerning litigation make them very difficult to endure scrutiny in the courtroom and bear examination by the media and public for which they also have motive to seek compromise in PIL.

### 4.2.1 Questionable Legal and Moral Grounds

It is well known that a lawsuit is a law-based confrontation between concerned parties in the court, which means that legal arguments and evidence that the two litigating parties present will be scrutinized in the courtroom. As for the parties in PIL, apart from being examined according to the law as argued, they are also put in the spotlight examined by the media and public that constitute a significant and indispensable part in PIL in China, although it is not a determinant in a court trial. Contrary to most plaintiffs who have solid legal grounds, most seemingly powerful defendants are vulnerable to such legal and moral examination.

A number of PIL cases discussed in this research have already confirmed the vulnerability of defendants in this respect. In the *Hao Jinsong* series of cases, for example, the railway authority did not have legal basis to reject providing an official receipt to passengers in accordance with the LPCRI. In the case of *Li Yan v. the Ministry of Education and Others*, those three government departments lacked legal evidence to elucidate why they refused to disclose the requested information required by the OGI Regulations. In *Li Gang v. the National Committee for Oral Health, and Others*, the concerned government watchdogs could not provide convincing explanation of why they failed to perform their duty to oversee the illegal business of the NCOH. In the same vein, the defendant in *Huang Yuanjian v. the National Grand Theatre* could not justify its decision to exclude non-Beijing residents from applying for its advertised job positions at the law level.

With regard to “moral grounds”, it does not suggest that judges must regard it as judging criteria, but just highlights a factor that may affect public opinion and the judiciary. For example, if a lawsuit was involved in vulnerable people like the handicapped person in the case of *Zhu Mingjian v. Dongguan Public Transport Co., Ltd.* (case 44), or referred to apparent unfairness like the controversial university admissions policy underlined in the case of *Jiang Yan and Others v. the Ministry of Education* (case 6), public overwhelmingly sympathized the claimants, which the judiciary had to take into account in the context of China. In a sense, we can say that public opinion or public support is even more important in PIL as it represents the moral judgment by ordinary people with sense of social justice. As He (2015, 274) has remarked:

Under such circumstances of lacking of judiciary autonomy, if blindly emphasizing the judicial “elitism”, or blindly emphasizing that judiciary is independent from public opinion, the outcome may endanger the legitimate basis of the judiciary [quotation marks in original].

Unexceptionally, all the defendants in these cases fell short of solid legal basis and moral grounds for their accused decisions and acts, which are their weaknesses acknowledged by judges. Thus, it was difficult for pro-defendant courts to persistently rule in favour of them. As shown in Figure 3.2, defendants obtained only 10.23% of favourable rulings, which was less than half of rulings favourable to plaintiffs. Of course, on the other hand, defendants were still dominant in total proportion of PIL cases, because a considerable number of litigation applications by plaintiffs were either dismissed or rejected by the courts (see also Xu 2008, 329). This ratio suggests that the courts prefer to dismiss or reject litigation application rather than to make favourable decisions for defendants in dealing with PIL.

In the meantime, the public are aware that PIL litigants would have usually never filed lawsuits aiming at the government and state-owned large companies if they had not have abundant legal evidence (Niu 2015, 281). They are also aware that most of PIL cases are for the public interest rather than for litigants’ individual interests, so they are sympathetic to those plaintiffs (He 2015, 273-274). In this setting, powerful defendants have to make concessions for their interests at times.

#### 4.2.2 Making Concessions in Two Situations

Generally speaking, government agencies and state-owned enterprises involved in litigation are likely to make concessions in two particular situations: either fail to offer credible legal evidence or avoid becoming the target of public anger.

As for those powerful defendants, when their decisions or acts are evidently inconsistent with the law or unreasonable, they may give complainants positive response and make partial concessions after being taken to court. They are aware that going to court means that they have to provide corresponding legal evidences that will be examined in the spotlight. If they fail to offer sufficient legal evidences or convincing explanations for their decisions or acts, their reputation will be at risk of being damaged.

In the case of *Zhu Mingjian v. Dongguan Public Transport Company* (case 44; Ma & Lai 2011; Ma & Liao 2011), for instance, Zhu Mingjian (朱明建), the plaintiff with disabilities from another city tried to take a free public bus in the City of Dongguan, Guangdong Province, but was rejected by the conductor on the grounds that he was not a local disabled person. Therefore, Mr. Zhu sued Dongguan Public Transport Company for its violation of relevant legislation, which promised disabled persons a free ride on public transport. He requested the court to order the defendant to make a written apology, refund the ticket fare he had paid, and compensate him for emotional distress. After receiving his litigation application, Dongguan No.1 Intermediate People's Court started a pre-trial mediation, which led to the settlement in which the defendant made an oral apology and compensated him of ¥3,000 (€425), while the claimant withdrew his suit.

One party in the dispute was a disabled person whose claim was on the basis of the Measures of Helping People with Disabilities in Guangdong Province (the HPD Measures). Article 2 of the HPD Measures prescribes: "Disabled persons with Guangdong household registration can obtain assistance in accordance with this Measure." Article 18 goes to to elaborate:

Blind people and severely physically disabled persons with certificate of disabled person can take public bus for free; other dis-

abled persons with a certificate of a disabled person can enjoy free or half-priced benefit when taking public transport.

In view of these provisions, Mr. Zhu was qualified to take bus for free as he was a resident with Guangdong household registration and was severely physically disabled. In other words, the defendant did not have legal grounds to reject his right to take bus for free in Dongguan where this litigation occurred.

The another party was a public transport company under the city government, which defended its decision on the basis of a local legislation called the Notification on Elderly, Disabled and Students Concessionary Travel-related Issues, which states that disabled persons with Dongguan household registration can ride bus for free. In other words, those disabled persons with Guangdong household registration, but live in another city even within Guangdong provincial area, cannot enjoy free of charge public transportation service in the city of Dongguan. Nonetheless, this local legislation was in conflict with the provincial legislation that it was supposed to be bound under Article 80 of the Legislative Law, which clearly stipulates:

A local decree has higher legal authority than local rules issued by governments at the same level and lower level. Local rules enacted by the People's Government of a province or autonomous region have higher legal authority than local rules enacted by the People's Government of a major city located in its jurisdiction.

It can be clearly seen from this stipulation that the legal effect of rules enacted by the provincial government is higher than those issued by the lower level government. As Dongguan is a city located within Guangdong provincial administrative division, its rules shall be in conformity with the provincial regulations. Thus, the local legislation that the defendant invoked was legally flawed, which was the main reason why the defendant consented to a settlement with the plaintiff. Shortly after the litigation, Dongguan city government modified its policy by drafting the Measures of Assisting People with Disabilities in Dongguan, which specifies that both local and non-local handicapped persons are entitled to take bus for free. In such a way, it turned the case into a positive public relations ploy.

The second situation is that when defendants find that they have become the target of the public opinion because of their disputable decisions and policies as well as an ongoing lawsuit may bring negative publicity on them, they may agree to make concessions. In the context of Chinese politics, government officials can disregard individual litigants, but they cannot afford to defy public opinion in many situations, because boiling public opinion would exert either direct or indirect impact on them (Yang 2015, 179-180; Zheng 2015, 234).

Take the case of *Li Gang v. the National Committee for Oral Health, and Others* for example. When this certificate scandal was exposed, the concerned government agencies faced with a string of questions from the public. How could it be possible that NCOH had certified dental hygiene products for over ten years without the authorization required by law? Where did the money coming from this illegal business go? Who should have taken responsibility for this scandal? How does the authority oversee institutions with government background so as to ensure their independence and transparency? All these questions took aim at administrative nonfeasance, poor industry management and oversight, and even possible official corruption. It became clear that the NCAA and the MOH in this case had failed to perform their supervision duty for which they could not provide reasonable explanation. Thus, to extricate them from the limelight as soon as possible, they promised the public that they would regulate the certification of dental hygiene products and investigate the business of the NCOH.

In another case of *Li Yan v. the Ministry of Education and Others*, the three central government agencies initially did not take an unknown university student's request for government information seriously. They possibly supposed that this student would quit bothering them if she encountered a negative response. Their reaction was nothing unusual as ordinary citizens like Li Yan could not challenge their authority in a general sense. To their surprise, nonetheless, Li Yan brought an information non-disclosure lawsuit against them. To their more surprise, this litigation was made public and drew widespread public attention. Faced with this situation, they changed their previous attitude by providing her with the information they had formerly rejected. Beyond question, their refusal to disclose routine government information was categorically groundless in accordance with the OGI Regulations. If they insisted on rejecting to disclose requested information, they would face more public pressure.



The discussion above demonstrates that powerful defendants in some situations may seek a compromise in exchange for getting rid of litigation and media spotlight based on their perception of possible reaction from their superiors or higher authorities. It is noted that those sued government agencies and state-owned monopolies do not want to offend public opinion in many situations, nor do they indeed care about public opinion. This assertion, at first glance, seems contradictory, but it is understandable at a second thought, because their power source comes from their superiors in China's administrative system. Therefore, what they are more concerned is whether public opinion would influence their superiors who may intervene if they reckon what their inferiors have done cause or may cause unnecessary trouble (He 2015, 273). This is what Pei (1997, 844) has argued:

Although Chinese political system is undemocratic and unresponsive, certain egregious cases of abuse of citizens' rights, if subjected to sufficient exposure, can force national authorities to take drastic action against the culpable officials in order to appease public opinion and popular demands for justice.

Other scholars also discussed how public opinion plays its part in litigation in China. For instance, He Haibo (2015, 273), the Professor from Tsinghua University Law School, notes that the influence of public opinion is often realized through political leaders' intervention such as internal written instruction and speech in China. In other words, public opinion per se may not directly influence those unresponsive officials, but it may indirectly impact on those officials through other channels like senior leaders' internal written instruction and speech influenced by public opinion.

### **4.3 The Judicial Predicament in Addressing PIL**

Over the course of public interest lawsuits, the court is an important platform where not only litigants present their legal evidences and arguments to solicit media and public attention, but also judges apply laws to review and make their decisions that would influence concerned parties and even bring about positive or negative effects on society. In this regard, Chayes (1975-1976, 128) concludes: "The judge is not passive but takes an active role in organizing and shaping the litigation." This sort of judicial activism is

just what PIL practitioners expect. Many interviewees hoped that judges can do their job in accordance with law and the spirit of law, and play “an active role” to address PIL cases brought to them (IC8, IC10 & IC25).

Nonetheless, the Chinese judiciary is often placed in a predicament in dealing with public interest cases. This is not just because PIL is a newly developed litigation instrument or a few cases and claims are something new, so judges do not have precedent cases to be referenced or lack corresponding experience and expertise to handle them, but because judges, to a large extent, cannot independently adjudicate cases despite of the fact that they are supposed to exercise their adjudicatory power free from interference under the Constitution which articulates it in Article 126:

The people’s courts exercise judicial power independently in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.

The problem here is that such statement, or promise, remains in the book because, as discussed in preceding chapter, the Party still regards the judiciary as an instrument to serve its policy. For example, it requires courts and procuratorates to stick to “Three Supremes” (*sange zhishang* 三个至上). According to Hu Jintao, the former CCP General Secretary, grand judges and grand procuratorates must always adhere to “the supreme of the business of the CCP, the supreme of the interests of the people, and supreme of the Constitution and the laws” (Sun & Li 2007). It is important to note that the sequence of these “Three Supremes” is successively the CCP, the people and the law. The “law” is listed at the last one from the standpoint of the Party. Xi Jinping (Xi 2015), the current CCP General Secretary, also stressed this point at the CCP Political and Legal Working Conference in January 2015:

We should cultivate a political and legal team that is loyal to the Party, the state, the people and the law. We should guarantee that the sword hilt is firmly held in the hands of the Party and the people.

Again, the political and legal team is requested to be primarily loyal to the Party. The subtext of the supreme leaders is clear that the judiciary must obey the will of the Party first instead of the law, which inevitably endangers judicial autonomy and impartiality (as to the flaws and abuses of China's judiciary, see Zhang, *et al.* 2008, 230-236). The Party's attitude towards the judiciary should come as no surprise as Fewsmith (2013, 11) has remarked that "Authoritarian regimes by definition resist rule of law and an independent judiciary". This observation also applies to the Chinese authorities — a post-totalitarianism regime.

Under such circumstances, it is a logical outcome that the judiciary not only cannot effectively exert its independent authority, but also must follow the Party's orders and surrender to intervention of the Party (Wang 2011, 178). A notable example was its response to the victims caused by the Sanlu melamine-tainted infant formula mentioned in Chapter 3. The chain of evidence between the manufacturer, the poisonous chemical substance in the infant formula and the victims is sufficiently established. Yet the judiciary rejected almost all litigation applications in that the authorities regarded this incident as a matter of political sensitivity that might affect social stability.

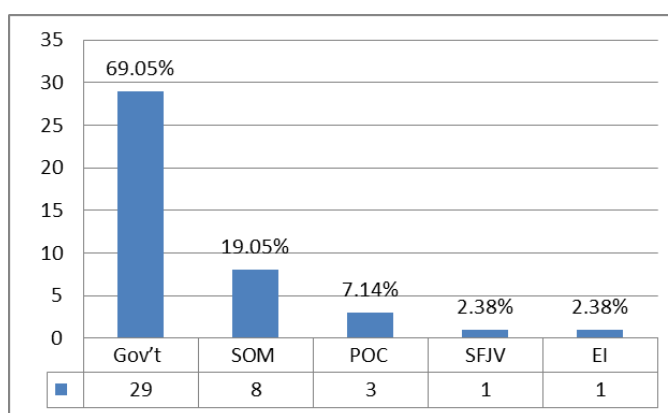
On the other hand, however, the judiciary cannot totally ignore or deny PIL litigants' lawful and reasonable claims for the reason that if it completely deviates from facts, its function as a nominally independent judicial body would be invalid. As Pei (1997, 844) has argued: the court cannot afford to rule consistently against the government, but it cannot persistently rule in favour of the government either, because this will "jeopardize its credibility, public image, institutional identity and sense of professionalism". Given this backdrop, the Chinese judiciary usually adopts three approaches to cope with public interest lawsuits.

#### **4.3.1 Rejecting PIL Claimants at the Case Filing Stage**

In dealing with PIL, the most commonly used approach by the judiciary is to reject PIL claimants straightaway from the courtroom at the case filing stage on the grounds that they lack substantial standing, or there is insufficient evidence to underline their claims, or their claims are beyond its jurisdiction.

One of important reasons that the courts are reluctant to accept some cases for trial is that they are aware that a few administrative decisions and actions as well as some consumer-related charging policies made by state-owned industrial giants are questionable or even inconsistent with laws and administrative regulations (IC15 & IC16). If they deliver verdicts egregiously in favour of defendants without taking account of legal evidence presented by PIL plaintiffs, it may result in backlash by infuriating the public and making themselves the target of public opinion.

**Figure 4.3: Category of Defendants in Rejected and Dismissed Cases 1996-2012**  
(n=42)



**Notes:**

Gov't: Government;  
 SOM: State-owned monopoly;  
 POC: Privately-owned company;  
 SFJV: Sino-Foreign joint venture;  
 EI: Educational institution.

Hence, the judiciary prefers to reject or dismiss PIL litigation applications rather than to register them for trial, which is displayed in Figure 3.2 in which the percentage of PIL cases that courts rejected and dismissed was as high as 47.71%, whereas the percentage of those cases that courts registered, then declared the claimants losers was just 10.23%. Moreover, the courts are specifically cautious in tackling those cases involving the government. If we take a look at the category of defendants among those rejected and dismissed cases shown in Figure 4.3 above, we can see that the majority of them (69.05%) concerned the government. To put it another way, the courts may regard those lawsuits involving the government as tricky cases, so they choose to stay away from them.

The case of *Jiang Tao v. Chengdu Branch of the People's Bank of China* (case 8; Zhou *et al.*, 2006) provides an example to examine such preference of the court. In this case, Jiang Tao (蒋韬), an undergraduate from Law School of Sichuan University, sued Chengdu Branch of the People's Bank of China (PBOC Chengdu Branch) for alleged employment discrimination on the basis of height in 2002.

In its new staff recruitment advertisement, the PBOC Chengdu Branch required male applicants be above 1.68 metres in height and female applicants above 1.55 metres. Due to the term of height restriction, Mr. Jiang who is 1.65 metres in height was excluded from the recruitment examination. He thus filed a lawsuit against the PBOC Chengdu Branch. The second day after the court delivered the defendant the indictment, the PBOC Chengdu Branch updated its recruitment advertisement in the media and eliminated the term of the height requirement. At the same time, it made a phone call to Mr. Jiang, asking him to apply for its advertised jobs, so the plaintiff actually realized his litigation request even before the court trial.

However, as a law student, Jiang Tao was not content with what he had achieved, and he tried to do more to push back against employment discrimination for the public good. Therefore, he proceeded with his lawsuit, requesting the court to confirm the initial advertisement by the defendant as unconstitutional. The court rejected his litigation request, holding that the right for the plaintiff to take the recruitment examination was maintained because the defendant had already cancelled the height restriction over the course of the proceedings.

The fact in this case was simple and clear. The plaintiff was unqualified to apply for the bank job because of height restriction required by the defendant. The question here is whether this requirement was lawful and reasonable. It is acknowledged that if some job positions refer to specific job functions, it is necessary and reasonable for employers to state certain physical and physiological requirements like height or age. In other cases, such unnecessary requirements may involve employment discrimination. The PBOC Chengdu Branch was obviously aware that its requirement on height did not have legal grounds for the reason that there was no necessary connection between advertised job positions and height requirement. Therefore it rapidly updated its employment advertisement.

On the part of the court, the plaintiff's continuing his litigation put it in an embarrassing situation. It was apparent that the court could not find grounded legal evidence to rule against the plaintiff, nor could it rule for the plaintiff in that the defendant in this case was a branch of Central Bank in charge of all financial institutions in Sichuan provincial administrative area. Hence, it chose to avoid taking the case.

Similarly, in another case of *Jiang Yan and Others v. the Ministry of Education* (case 6), the Supreme People's Court (SPC) was unwilling to take the case regarding the Ministry of Education (MOE) even though it has legal grounds to either accept or reject this lawsuit in terms of law. If it chose to accept the case, Article 16 of the ALL provides it with legal basis as follows:

The Supreme People's Court shall have jurisdiction as a court of first instance over major and complicated administrative cases in the whole country.

Since this case was related to the interests of millions of university entrance examinees and the reform of national college admissions policy, it can be considered to fall under the category of "major and complicated administrative cases" defined in this stipulation. Of course, the SPC can also invoke other provisions of the ALL to reject the case, which it did because Article 14 prescribes:

The intermediate people's court shall have jurisdiction as courts of first instance over the following administrative cases: ... (2) suits against specific administrative acts undertaken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and (3) major and complicated cases in areas under their jurisdiction.

According to this provision, the SPC can pass this case to an intermediate people's court, which is empowered to take this kind of case as the MOE is under the State Council. Seen from the perspective of the SPC, no matter what rulings it would make if it had registered the case, it would inevitably have been placed in an embarrassing situa-

tion. If the verdict was favourable to the plaintiffs, it would surely have an unprecedented impact on society for which the education authority might have not prepared yet. On the other hand, if making a decision against the claimants, it might also lead to anticipated public outcry. After all, even the MOE did not deny the unfairness of college admissions policy, so it was a preferable option for the court to avoid taking the case.

Therefore, we may come to a conclusion from the discussion above that a considerable number of PIL practitioners fail to get access to judiciary not because they do not have solid legal grounds, but because they have abundant legal evidence that would or might put their powerful opponents into a corner. The courts were therefore reluctant to take these cases to avoid making decisions that might go against the common sense and basic social justice. In the words of an interviewed lawyer:

If the court refuses to register a case with a public interest nature, it often means the claimant has sufficient legal evidences that the court would be difficult to deny (IC13).

#### **4.3.2 Partially Satisfying PIL Practitioners to End Litigation**

Another approach that the judiciary takes is to make a judgment partially satisfying PIL practitioners in return for ending a few high-profile lawsuits that may damage the images of the government and the judiciary. A judge in the interview admitted that the court has to take both legal and non-legal elements into account rather than just basing its decision on the law and legal evidences when hearing a case:

Addressing a public interest case is a complicated process. We need to consider various elements that the public may not imagine, which include the validity of submitted legal evidences, the authority of government departments involved, and potential impact on social stability brought about by the verdict, and so on (IC15).

Another interviewed judge also agreed with this point, saying that “The social effect of a ruling is usually our priority in dealing with some high-profile cases” (IC16). Their comments partly explain the Chinese judiciary’s embarrassing situation as an affiliate of

the administration in which it has to consider non-legal elements in handling PIL. The following case of *Zhang Xianzhu v. Personnel Bureau of Wuhu City* (case 13; Zhou, *et al.* 2006) provides an example to observe this issue.

Zhang Xianzhu (张先著) was a 25-year-old university graduate when this case was brought to court in 2003. He sued the Personnel Bureau of Wuhu City, Anhui Province for alleged employment discrimination against a hepatitis B virus (HBV) carrier. Mr. Zhang claimed in his proceedings that he ranked first among over 100 competitors in an examination for civil servant recruitment administered by the defendant, but was denied a job because he had been tested positive for HBV in the physical examination, which he considered violation of his equal right to employment. He thus requested the court to: (1) rule that the decision of the defendant to deny his entry into the civil service was illegal; (2) repeal the decision of the defendant and recognize his qualification to be a civil servant.

In April 2004, Xinwu District People's Court of Wuhu City rendered a judgment partially in favour of him, holding that the defendant lacked insufficient evidences to cancel the employment eligibility of the plaintiff. Yet the court did not support Mr. Zhang's request to be recruited as a civil servant on the grounds that civil servant recruitment that year had finished.

This was the first case pertaining to discrimination against HBV carriers that was accepted by the court and was judged in favour of the claimant in China. This anti-discrimination lawsuit reveals the social exclusion that HBV carriers have suffered. It is reported that there are about 120 million HBV carriers in China who routinely suffer from prejudice and exclusion in education and employment because of public misunderstanding, and some unreasonable or outdated administrative regulations and policies (Du, 2005). Since such a large group including the plaintiff in this case was excluded from civil service that is one of the most popular job positions in China today, this lawsuit turned out to be a public topic associated with social justice, social harmony and social stability.

Zhou Wei (2006, 319-20), a law Professor from Sichuan University Law School, pondered it from the perspective of the Constitution by arguing that this case has demon-



strated that normative documents and administrative regulations issued by the government concerning labour employment must be bound by the principle of equal rights in the Constitution, otherwise citizens' equal employment opportunities and rights cannot be guaranteed, and could be even violated.

The court made a balanced ruling that took into account the interests of the two parties. It partially satisfied the claim of the plaintiff, but also maintained the concerned government agency's authority. In doing so, the court wisely tackled this high-profile case that might otherwise have stirred up more public complaints due to the fact that this case had already become a public incident during the proceedings. In a sense, such verdict can be called a "harmonious adjudication" (Froissart 2014, 14).

In the same vein, the court also adopted this approach to handle the case of *Li Gang v. the National Committee for Oral Health, and Others* (case 37). After rejecting the litigation targeting the concerned administrative agencies, the court made a decision against two commercial companies, ordering them to compensate the claimant. As for the NCOH, another defendant, the court alleged that there was no direct correlation concerning civil rights and obligations between the NCOH and the plaintiff. Yet it suggested the relevant government organs investigate its disputable certificate business. This decision actually implied that the court was also dubious about the certificate authority of the NCOH, but was reluctant to directly charge it as it was affiliated to a ministerial-level government agency. Anyhow, this ruling realized two objectives. It finally ended this high-profile lawsuit that had captured public attention for almost two years and maintained the court's reputation as a legal arbitrator from the standpoint of the public (Zhang 2007).

To summarize, by partially satisfying the claims of the plaintiff, the court can terminate a high-profile case and calm down public opinion as soon as possible. While this sort of "harmonious adjudication" is unfair to PIL plaintiffs who, as mentioned earlier, usually have solid legal basis in the court, it at least considers and balances the interests of each party. Therefore it can be accepted by all relevant parties given the legal reality in China in which a relatively workable legal framework is formed, but the rule of law is not in place yet (Li, *et al.* 2010, 497-501; Yang 2015, 180).

### 4.3.3 Mediating Concerned Parties to Reach a Settlement

The third approach to deal with PIL by the judiciary is to mediate concerned parties to reach a settlement. If it faces with a well-grounded lawsuit which has been exposed to the public, the court may find it difficult to reject complainants straightaway. Therefore, it may take this approach to resolve the dispute.

Take *Li Yan v. the Ministry of Education and Others* for example. Although she was just a graduate student, to her advantage is that the SPC had just issued a judicial interpretation on the OGI Regulations — the Rules on Several Issues of Adjudicating Administrative Litigation Cases on Open Government Information (OGI Judicial Interpretation) in July 2011, one month before she lodged the suit. Article 1 of the OGI Judicial Interpretation requires all courts throughout the country to accept five types of cases, including the refusal of administrative organs to offer information or their failure to reply to an inquiry in due time, the failure of administrative organs to provide information that meets the requirements in the application, and their failure to provide information in the appropriate form required by law (Supreme People's Court, 2011). In view of these explanations, the court was supposed to hear her case.

However, this was a thorny case for the court for three reasons. First, the defendants — three central government departments that should have observed the OGI Regulations did not follow it, nor did they provide convincing arguments to explain the reason why they had refused to disclose the requested information. Second, the SPC had issued the OGI Judicial Interpretation just before the litigation, which requires all courts nationwide to actively take cases pertaining to government information disclosure. And third, this lawsuit had been exposed by media, which triggered an avalanche of public criticism of these government departments. To put it another way, this case became more a question of government commitment to the law than just a dispute over administrative nonfeasance. In this situation, the court mediated the two parties to reach a settlement in which the plaintiff withdrew the suit while the defendants provided her with the requested information.

It should be admitted that this solution was not only beneficial to the two parties involved, but also did the court good. It was obvious that if the court accepted the case, it would be a challenge for it to make a judgment that did not offend the three central gov-

ernment departments, nor did draw public criticism. Meanwhile, it can be inferred that had Li Yan made a complaint at other times without these favourable elements mentioned above, the court might have rejected her litigation application at the case filing stage. As an interviewed judge acknowledged:

We are aware that some complaints brought to the court have legal grounds that should be properly handled. However, these lawsuits are often related to government departments, which put us in a dilemma. Because we cannot recklessly deny the reasonability of these complaints, nor can we blame concerned government agencies (IC16).

For instance, in the case of *Zhu Mingjian v. Dongguan Public Transport Co., Ltd.*, the court mediated two parties to reach a settlement after receiving litigation application. On the one hand, it would have been difficult for a local court to make a decision unfavourable to the defendant which had followed a local legislation. If the court had made such a ruling, it would have been tantamount to challenging the local legislation and local government. Under the current judicial framework in which the financial and human resources of local court are highly reliant on local government, such a challenge is almost impossible. As Palmer (2014, 107) has argued:

In post-Mao China's legal development, one of the most serious difficulties has been the need for effective legal controls over the exercise of administrative powers by the state.

On the other hand, it might also have been difficult for the court to rule against the complainant as he had a solid legal basis, i.e., the provincial legislation has higher legal authority than city legislation under the provincial jurisdiction in accordance with the law, so the mediation was in the court's interests, too.

Of course, registering the case and then ruling against the plaintiff is also one of the options for the court. Chen Youxi (2006), a lawyer and the deputy director of the Committee of Constitutionalism of All-China Lawyers' Association, has noticed that most courts seem to follow an unspoken rule: to discourage PIL by ruling against those who

lodge this type of litigation, even if the defendants' decisions and actions were obviously unreasonable or unlawful. After such a case is concluded, the victors in the court might adjust or revise their previous decisions or policies later.

A number of cases discussed in this study have confirmed this argument. For example, in *Qiao Zhanxiang v. the Ministry of Railways* (case 5), the court ruled against the plaintiff, but concerned authority also improved its work even before the second instance by holding a public hearing on train fare adjustment, which was one of the plaintiff's claims. In another case of *Chen Faqing v. Yuhang District Environmental Protection Bureau* (case 9), while the court dismissed the plaintiff's litigation application, the local government and the EPB began to address the severe environmental pollution that the plaintiff requested.

In a nutshell, the Chinese judiciary cannot or is reluctant to assume an active role in dealing with public interest lawsuits especially related to the government, nor does it try to address the roots of disputes, although it has cautiously handled a few high-profile PIL lawsuits. On the other hand, PIL proponents have not placed much hope on the judiciary as commented by an interviewed PIL activist:

In a society not being governed by the rule of law, I do not expect something more from the court. If it can make relatively impartial trial and adjudication, it is ok for me (IC17).

Meanwhile, due to the passive and unresponsive judiciary, PIL practitioners turn to seek other possible allies to exert pressure on their opponents and the judiciary to achieve favourable results while initiating their legal action. One of their allies is the media which play an active role over the course of PIL. The following section discusses how the media influence concerned parties and their bargaining processes in PIL.

#### **4.4 Media Effects on PIL**

As an impact litigation or strategic litigation aimed at rights claim and policy change, PIL does not entirely rely on court decisions, but to a large extent relies on the sympathy and support it can garner from the general public and elites (Gloppen 2005; Wang &

Chen 2010, 88-93; Zheng 2015, 261). For this, Gloppen (2005) makes an argument emphasizing the necessity for “out-of-court mobilization”:

What takes place in court is only one aspect of the litigation process, and the social and political implications of winning (or losing) a social rights case in court, depend as much on out-of-court mobilization, as on the judgment itself [parentheses in original].

As regards the “out-of-court mobilization” in PIL, the media plays an irreplaceable part in disseminating relevant information and influencing public opinion during the litigation process, which is specifically significant in China. As discussed earlier, under the current Chinese political system, public participation or political participation is restrained in which Chinese citizens can rarely influence policy-makers through either direct channels like election or indirect channels like demonstration and petition. Thus, taking advantage of mass media as one of political resources to mobilize public opinion for influencing public policy has become an available and effective option for PIL proponents. Additionally, as a legal system based primarily on the civil law model, the Chinese judiciary does not recognize legal precedents as binding in later cases. That is to say, the court decision of one case does not mean that other future cases of a similar nature will be decided in the same way in China. Thus, the effect of individual case on future similar cases is also mostly dependent upon media coverage.

It is acknowledged that media coverage of judiciary is connected with media social responsibility and the right to freedom of expression, which is an important factor to foster judicial justice and social justice in any society, as the Madrid Principles of the Relationship between the Media and Judicial Independence (1995, 106) articulates:

Freedom of expression (including the freedom of the media) constitutes one of essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence [parentheses in original].

To be sure, freedom of the media in China is restrained for the time being, but they still have room to cover less politically sensitive topics including PIL due to its double features in China's social structure. They, especially mainstream media, are the mouthpiece of the party-state, but also bear the function of public opinion supervision. As for the latter, the media are supposed to pay attention to public interest and social justice. Since PIL is a type of litigation focusing on the public interest, specifically vulnerable groups' interests and social justice, the media has a close affinity with PIL. On the one hand, the media is anxious to draw audiences as much as possible by reporting those stories that can attract the attention of the broad public, because more public attention means more newspaper circulation or television and radio ratings, which also means more advertising revenues. On the other hand, PIL proponents also need media coverage of their lawsuits and cause, which can further justify their claims and accusations as well as help garner public support and exert pressure on concerned authorities. Given this potential media influences, an interviewed law scholar spoke without reservation: "There won't be PIL without media coverage" (IC1).

#### 4.4.1 Media Coverage of PIL without Restrictions

The media in this research refer to both traditional media such as television, radio, newspapers, magazines, and web portals like *sina* (新浪), *sohu* (搜狐) as well as web-based social media such as Twitter-like *weibo* (微博) in microblogging, Facebook-like *renren* (人人) in social networking, and WhatsApp-like *weixin* (微信), a mobile messaging service in China. All these diversifying communication channels are indispensable for PIL proponents to advance their litigation.

The media, specifically traditional media in China is still regarded as the mouthpiece of the party-government for which it is required to promote party ideology and guide social opinion (Shirk 2011, 3). They are also under the control of the propaganda authorities, which includes both direct and indirect control such as propaganda directive, censorship and self-censorship through which media contents are controlled and guided. For this, Li (2010, 72) has observed:

Although the public's access to information has improved, the Party Centre continues to exercise strict control over the me-

dia, effectively keeping the bulk of China's press as components of a vast national propaganda system.

On the other hand, the media also has its own interests and agenda in an increasingly commercialized and competitive media market accompanied by the reduced financial subsidies from the government since the 1990s (Zeng 2012, 13). One of its interests is how to increase advertising revenue based on television and radio ratings and newspaper circulation. Such motive would certainly affect the relationships between the media and audiences, and prompted the media to focus more on those news stories that can draw public attention.

Of course, there are some sensitive topics like universal values, human rights and judicial independence for which media are not supposed to report. Nonetheless, some other subjects like environmental protection and consumer rights are generally less sensitive, which media have space to cover. PIL is one of those topics. Meanwhile, since PIL cases often touch upon some controversial subjects, media coverage of them can solicit more public attention as a journalist from a traditional printing media outlet said in the interview:

Some public interest lawsuits have created good opportunities for us to dig up further stories. We are willing to follow these cases because readers are always interested in news stories related to law and courts. So if we do not receive relevant propaganda directive, we would like to cover PIL (IC22).

As for the blooming social media, they have broken the information monopoly of traditional media and become an important platform for public opinion and public participation (Luo 2015, 237-245) even though they are also subject to censorship in their use of sensitive issues for discussion. According to China Internet Network Information Centre ("China Internet" 2017), as of December 2016, China had a total of 731 million Internet users, and Internet penetration rate reached 53.2%. At the same time, mobile Internet users reached 695 million, which accounted for 95.1% of total Internet users. Given such a huge number of users who receive information from different channels, it will surely encourage their critical thinking and influence their social behaviour.

In addition, there is increasingly dynamic interaction among different media channels. Sometimes a piece of local news on the information of a case with a public interest nature that was posted on a website and circulated in social media might secure printing media attention. After making supplementary interviews, it published its follow-up report. Then this news story was reposted onto more websites, and recirculated in social media, which would trigger off further public discussion and debate. Such interaction of media and flow of information may make a trivial case evolve into a noteworthy public event.

Briefly, Chinese media are subject to censorship and self-censorship under the propaganda authorities. Yet they still have space to cover less politically-sensitive subjects, which has left room for media to follow PIL cases and for PIL proponents to convey their information by way of media.

#### **4.4.2 Providing Bargaining Leverage for Litigants**

With regard to the media effect on PIL, it can be examined in two respects. First, by following on-going lawsuits and mobilize public opinion, the media can give encouragement and bargaining leverage for PIL litigants who are otherwise difficult to confront their powerful opponents (Zheng 2015, 234). As mentioned earlier, parties involved in PIL is often an asymmetric confrontation where one side is the powerless and the other side powerful, the litigation outcome thus would generally be predictable. Nevertheless, media involvement in PIL cases may put concerned government departments and vested interests in a defensive position and increase the uncertainty of the litigation result.

Take the case of *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China* (case 21) for example. During the proceedings that lasted two years, numerous national, regional and local media outlets followed the case, which included *Xinhua News Agency*, *China Central Television*, *People's Daily*, *Legal Daily*, *China Youth Daily*, *China Newsweek*, *Democracy and Law Weekly*, *Beijing Youth Daily*, *Beijing Television*, *Beijing Evening News*, and *Southern Metropolis Daily*, as well as a number of major online news aggregators like *Sina*, *Sohu* and *Tencent*. Of these media outlets, *Legal Daily* and *Beijing Youth Daily* reported this case more than ten times from the outset to the final verdict (Yu 2005). The intensive media coverage of this lawsuit was possibly



an important factor that led to the second instance decision of the court favourable to the claimant after he lost the case in the first instance. Such media effect is what O'Brien and Li (2006, 62) have described in the following terms:

Concessions are particularly likely when activists manage to go a step further and locate champions in the media, who can lift the claims of rightful resisters to the ideological high ground by linking them to the Party's commitment to develop "socialism" and "rule by law" [quotation marks in original].

Another example was the series cases of *Hao Jinsong v. Beijing Railway Bureau* (case 18, 23 & 25). When the plaintiff lodged these lawsuits, he was just a law graduate student, while his adversary was the powerful railway authority. Therefore, it was not surprising that the court ruled against him twice in a row. To his advantage was the fact that the media and public persistently stood by him during the whole process of the litigation. A large number of media reports and commentaries accused the railway authority of rejecting to provide receipts to customers, criticized the court's decision being not conform to the law, and applauded the plaintiff for his citizen awareness to protect his legitimate rights. The incessant media reportage and public opinion backlash surely played a part in pressuring the court to rule favourable to the plaintiff in his third similar suit. It should be admitted that without the media and public pressure, it was difficult for the plaintiff to eventually win the case. No wonder many PIL practitioners have attributed their success in the courts to the media as two of them commented in the interview as follows:

I think I was lucky because my litigation attracted media attention and public support during the whole proceedings. Otherwise, it was inconceivable for me to win the case (IC17).

When I took legal action to claim my equal right to employment, I was not sure whether it was a suitable idea. For a time, I was even disappointed and exhausted. However, as the media kept reporting the lawsuit, I received lots of letters and emails from those who had also suffered employment discrimination. It

was this support and encouragement that I was determined to keep on with this litigation (IC7).

In summary, media coverage of on-going lawsuits can, to a large extent, encourage PIL practitioners morally and spiritually as well as provide them with important bargaining chips in their litigation. Consequently, PIL litigants are always doing everything possible to put their litigation in the media spotlight at the very beginning.

#### **4.4.3 Exerting Pressure on Defendants and Courts**

The second effect that the media has is that it can reduce blatant administrative intervention and foster judicial impartiality to a certain extent (Zheng 2015, 261-262). In other words, it can influence the way that the government and judiciary deal with PIL as Cai (2005 782) has argued: “In the Chinese context, successful resistance is likely to occur when those taking action put sufficient pressure on the local government.”

As the government intervention in trial in today’s China has become a normal situation, many law scholars, lawyers and even judges regarded it as the major challenge to the judicial independence, judicial impartiality and judicial authority (Li 2013; He 2015, 273). Li Qunxing (2010, 9), the vice director of Wuhan Maritime Court in Hubei Province, has also admitted:

At present, the biggest obstacle for the judiciary in our country to independently perform its duty is not from public opinion, but from the intervention of public power.

According to his experience in the court, public power involving a case likely appears two times: one has already existed to manipulate the judicial process before the case is exposed and draws public attention, whereas another is in the form of a written instruction on the case to appease public opinion after this case is exposed and engenders a public backlash (*ibid*). Such government intervention in the judiciary, of course, is made behind closed doors. In order to resist such intervention, PIL practitioners always rely on the “noisy, public and open” (O’Brien & Li 2006, 4) approach to bring their litigation to the public spotlight. Obviously, if their litigation information can be made public through the media as soon as possible, the possibility of direct official intervention

would be accordingly decreased. Otherwise, their voices could be muted because the media may be ordered not to cover some lawsuits from local and central propaganda authorities.

Take *Liu Yanfeng v. Shaanxi Provincial Department of Finance and Another* (case 82) as an example. Before this case became the focus of the public opinion, the authorities seemed to be unwilling to investigate the accused official, which could be confirmed from their refusal to disclose his annual income requested by the plaintiff who suspected that his annual income did not tally with the number of luxurious watches he showed off on several occasions. However, as the media intensively covered the case and the public increasingly asked for official assets openness triggered by the litigation, this “local news” instantly turned out to be “national news” and this “minor case” instantly became the “major topic of online debate” (Liebman 2011, 158). That is to say, this litigation lodged by an unknown university student became a public incident that had attracted widespread public attention throughout the country. Under such circumstances, the relevant government agency might feel the pressure and began to make an investigation in order to avoid its reputation being further damaged, which led to the fall of the corrupt official.

Some other cases mentioned in this study also benefited from media coverage. For instance, *Dong Jian v. the Ministry of Health* (case 38) concerned a sensitive subject — the right to freedom of association in spite of the fact that the claimant accused the defendant of administrative nonfeasance. If this litigation had not been immediately exposed by the media at the time, some degree of official intervention might have occurred. The same went for the case of *Lin Lihong v. the Shenzhen Customs* (case 53) which challenged the reasonability of the overseas publications censorship policy, although the plaintiff did not directly charge it but complained opaque administrative penalty decision. Both two lawsuits might not have become known to the public and stirred up widespread public discussion if they had not been exposed by media early on. For this, an interviewed lawyer put it this way:

If the media repeatedly cover well-grounded claims, the government may have to do something to respond to the public,

because it would be unwise for it to ignore media reportage and public opinion (IC5).

In the same way, the judiciary is also subject to media coverage and pressured to impartially hear public interest lawsuits at times. As aforementioned, the Chinese judiciary is normally biased against PIL claimants and inactive in tackling such litigation (see also Wang 2011, 121-131; Xu 2008, 330). Nonetheless, once a lawsuit has been widely covered by the media and become a heated topic among the public including Internet users, the court would meticulously deal with it out of its own interests as Liebman (2011, 160) has put it:

Media coverage is undoubtedly increasing transparency in the Chinese legal system. The threat of media exposure is a powerful weapon that can pressure courts to follow both substantive and procedural law.

In the case of the aforementioned *Zhang Xianzhu v. Personnel Bureau of Wuhu City* (case 13), for instance, Mr. Zhang was denied an opportunity to be a civil servant by the defendant on the grounds that he was a HBV carrier. Since such suffering that the plaintiff endured was not unusual in China because of discriminatory policies and public prejudice, claimants in these lawsuits usually could not obtain favourable rulings in the courtroom.

Nonetheless, from the very beginning, this lawsuit captured the attention of the media. Almost all media outlets including *Xinhua News Agency*, *China Central Television*, and *People's Daily* reported the case and relevant background information. It also generated a heated public debate in both mainstream media and social media. Under the media spotlight, it was apparently difficult for the court to handle this case as usual. Hence, the court made a seemingly balanced ruling: it recognized that the plaintiff was qualified to apply for the job position which the defendant denied, but did not support his claim to be recruited as a civil servant on the grounds that the recruitment that year was over. In other words, the defendant should not have denied the eligibility of the plaintiff, but did not have to reverse its questionable decision. In doing so, the court virtually sided with the defendant, but appeased public opinion, too.

In another case of *Song Dexin v. Henan Provincial Expressway Development Co., Ltd.* (case 22) discussed earlier, the court possibly took the public opinion about the case into account in the second instance. The public had long been tired of shoddy service and higher toll fares at highways, so they expressed their discontent and complaint through this case. In this context, the appellate court did not uphold the first-trial decision. Rather, it conducted the mediation to resolve the dispute between the two parties. In such a way, the case was settled without triggering further public criticism.

As a matter of fact, in some other cases invoked in this dissertation such as *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China* (case 21), and *Hao Jinsong v. Beijing Railway Bureau* (case 18), the common features of them are (1) they were influential cases attracting widespread media coverage and public attention; (2) the plaintiffs lost the case in the first instance, but won in the second instance; and (3) after the first instance was made in these cases, unexceptionally, the court's rulings were widely questioned and criticized by the public. Of course, we cannot simply draw a conclusion that the public opinion backlash led to the court's decisions in the second instance in favour of the plaintiffs, but we can at least safely say that such public opinion played some role in the court's decision in the second instance.

To summarize, the media play a pivotal role in the course of PIL in China through conveying information about public interest lawsuits and mobilizing public opinion. It also exert pressure on concerned government departments and judiciary which otherwise may be unresponsive. As for such media effect, Liebman (2011, 151) has concluded as follows:

[...] the Chinese media have undoubtedly become one of the most important actors in the legal system. In numerous cases, the media are an important check on official abuses, coming to the assistance of victims of injustice, or pressuring courts to act fairly.

It is noted that emphasizing the role of the media in PIL does not suggest trial by media or overestimates the influence of media. On the contrary, the author firmly holds that the judiciary must independently perform its adjudicative power without being subject

to any external influence including the media. However, in such a situation where the judiciary lacks of autonomy as well as media cannot fully enjoy freedom of press over the coverage of lawsuits in China, it is unrealistic for one-sided emphasis of judicial elitism without considering the current judicial reality. As Niu (2015, 282) has pointed out:

The trial of a case is always the result of balance of various social values under a certain background. It is unrealistic and meaningless to hold such standpoint that the trial of a case is immune from any media influence as well as immune from any other values influence except for facts and law.

In fact, no matter whether the judicial system is independent or not, it is unavoidably influenced by various social forces in some ways, which is why both plaintiffs and defendants always try their best to influence public opinion by way of media in many cases, especially in a few high-profile cases.

#### **4.5 Concluding Remarks**

From the above analysis, we can see that PIL is a complicated bargaining process between concerned social actors who jointly interpret, define and redefine states of affairs (Klandermans 1997, 44). Accordingly, the process of a lawsuit with a public interest nature can be broken down into the following interrelated steps.

First, grievances and complaints make aggrieved people consider resorting to the law for their legitimate rights and interests. According to Klandermans (1997), at the heart of every protest are grievances, which include the experience of illegitimate inequality, feelings of relative deprivation, feelings of injustice, and moral indignation about a state of affairs. PIL is also a form of protest in which Chinese citizens present their grievances and complaints, voice their concerns and express their opinions through litigation, because those litigants have usually suffered some grievances caused by social injustice and inequality, which compels them to go to court for justice and seek judicial redress. If not, they could not be mobilized to engage in such time-consuming litigation with a low probability of winning.

Second, perceived opportunities inspire citizens to lodge PIL because rightful resistance relies on “both opportunities and perceptions” (O’Brien & Li 2006, 25). In an asymmetrical confrontation in the court where one party is powerless individuals and the other party powerful government and vested interests, the former must perceive some opportunities that can be exploited to reach their goal. Before taking legal action, they have to answer such questions as whether there are any opportunities, where these opportunities are, how to make the most of them. These questions and answers refer to “the entire external environment, in all its complexity” (*ibid*, 49). As for the opportunities of PIL litigants, they include applicable laws and regulations, public opinion, possible sympathizers among elites, the weaknesses of defendants, etc. By evaluating these opportunities, PIL practitioners can adopt the appropriate strategy in litigation.

Third, the calculation of costs and benefits in litigation may lead concerned parties to seek a compromise to minimize their costs and maximize their interests. In the view of Elster (1989, 22): “When faced with several courses of action, people usually do what they believe is likely to have the best overall outcome.” This logic can help explain the compromise between concerned parties in PIL. It is based on the rational reasoning that litigating parties which both have strengths and weaknesses interact and bargain with each other for their best interests at the lowest possible cost. Subsequently, they may make concessions in some situations in spite of the fact that they may have different interests and motives.

It is noted that compromise in PIL is often unfair for PIL litigants. It can be seen from the cases in this research that plaintiffs usually have a solid legal basis, which means they might have had a high probability of winning these cases in an independent and impartial courtroom. As it was difficult for them to win the case under the current judicial system, they had to make concessions. Of course, on the other hand, this is still a pragmatic approach to resolve disputes regarding the government and vested interests for the time being. After all, such compromise is mutually beneficial to both sides: PIL practitioners can partially achieve their objectives they may otherwise not have the chance, while their powerful opponents can extricate them from the public spotlight.

In a nutshell, over the course of PIL, the media play an important part in bridging PIL and public opinion, balancing concerned parties, drawing the attention of the public and

relevant government agencies, and fostering a fair resolution. Therefore, the most effective approach for PIL litigants is to combine their legal action with media coverage so as to mobilize public opinion to put pressure on concerned government agencies, state-owned monopolies and judiciary. This is something that rightful resisters are inclined to do, otherwise they may have no chance to make their voices heard and influence policy-makers.



## Chapter 5

### The Impact of PIL: Beyond Success or Failure

[...] given law's close relations with politics (as the Party/state defines it), it would only be artificial to make a legal argument without touching upon the political power in those cases [parentheses in original].

— Fu Hualing (2011, 355)

As a citizen legal action that has drawn widespread media attention and public involvement over the years, a question about PIL that is supposed to be answered is whether it has achieved anticipated objective. This question can be examined in terms of direct and indirect impact. The former refers to obtaining a favourable court order that can result in an immediate change in controversial decisions and acts or may lead to a few policies adjustment in a short term, whereas the latter involves long-term social effect that may need certain period of time to figure out what impact and changes it may bring about. In the words of Gloppen (2005):

[...] the value of litigation should not only be judged in terms of how a case fares in court (success in the narrow sense), or whether the terms of the judgment are complied with (immediate impact). It is as important to look at the systemic impact – the broader impact of the litigation process on social policy, directly and through influencing public discourses on social rights and the development of jurisprudence nationally and internationally [parentheses in original].

It is undeniable that PIL has mostly failed to realize its objective in terms of winning cases in the courtroom. As shown in Figure 3.2, the success rate for PIL litigants was only 23.86%, which meant that most of those who sought judicial relief and remedy did

not achieve what they had expected. Moreover, even though a few lawsuits did obtain favourable rulings, they cannot be applied to other similar cases in that the Chinese judiciary does not recognize precedents, as discussed in Chapter 4. Therefore, the direct impact of decided cases is limited.

In addition, those who won cases hardly gained enough compensation to cover their litigation expense, not to mention their other tangible and intangible costs like time, energy and human resources during the litigation. As a matter of fact, there occurred many cases called “one-yuan (€0.14) lawsuits” in which claimants only asked for one yuan in compensation for their grievances and emotional distress from their adversaries, because they did not expect courts to award them decent compensation at all (Tong & Bai 2005, 25; Feng 2005).

One notable example was the case of *Ge Rui v. Zhengzhou Railway Bureau* (case 3; Han, 2001) in which Ge Rui (葛锐) filed a three-year lawsuit against Zhengzhou Railway Bureau for charging him a public toilet fee of ¥0.30 (€0.04) inside the railway station without legal basis in China. In spite of the fact that this long time-consuming litigation had cost him about ¥2,000 (€283), he only received the compensation of ¥0.30 from the defendant, the amount he had paid for the use of the toilet after the case was finally ruled in his favour.

Nonetheless, the rationale for PIL practitioners to take such legal action from the inception is that they do not have much confidence or attach importance to win the case in the court due to inherent flaw of current judiciary as mentioned earlier. Thus, they prefer to focus on mobilizing public opinion and public support by means of litigation through which to exert pressure on the government and vested interests. This point of view, so to speak, is the consensus of all interviewed law scholars, lawyers and other PIL proponents in this study. Guo Jianmei (Guo & Li 2009, 376), a prominent public interest lawyer, has also noted:

In the whole process of public interest litigation, litigation is only a link while the real goal is to push forward the improvement of the overall rights in a certain area, including the progress and improvement of legislations.

Given these arguments, PIL should be assessed in a wider socio-political context and based on long-term effect, rather than just being gauged by its win-loss ratio, although that is one of its indicators. Viewed through this lens, PIL in China has already achieved much in terms of increasing public awareness of constitutional rights, contributing to reshaping state-society relations, encouraging legal struggle to advance rights, and serving to strengthen a fledgling civil society. This chapter will survey the impact of PIL by analyzing these four interdependent aspects.

## 5.1 Increasing Public Awareness of Constitutional Rights

The first effect of PIL is its achievement in increasing public awareness of their constitutional rights written down in the Constitution, but has been overlooked for a long time. It is admitted that only through cognizing their assumed economic, social and political rights, can citizens stand up for these rights.

According to Chinese law, constitutional rights include not only economic, social and cultural rights like equality before the law, the right to equal pay for equal work, the right to health care and education, but also civil and political rights such as the right to liberty, thought, expression, and association. These rights are also written in a series of significant UN documents like the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. However, the party-state always emphasizes citizens' obligation towards the state instead of their legitimate rights guaranteed by law. Moreover, even though the Party occasionally speaks of civil rights, it often refers merely to citizens' substantial rights rather than their constitutional rights. As Pei (2004, 25) has observed:

The central goal of the extension of rights to individuals, moreover, is not the protection of individuals against the state, but the better fulfilment of duties to the state by individuals.

Due to this official attitude and policy orientation toward individual rights in a long time, Chinese citizens may not be exactly aware of their constitutional rights. In December 2014, *China Youth Daily* (Xing & Xiang 2014) conducted a survey of 52,007

mobile phone users about their knowledge of the Constitution, which revealed that only 12.7% of respondents replied that they knew about citizens' constitutional rights. In other words, among the respondents, a total of 87.3% of respondents were not aware of their constitutional rights. Given this background, it is important to show the public what constitutional rights they are supposed to have, and how to claim and defend their constitutional rights through legal action. Some of the aforementioned high-profile public interest lawsuits have provided good examples in this respect.

The case of *Jiang Yan and Others v. the Ministry of Education* involved equal access to higher education opportunities, *Huang Yuanjian v. the National Grand Theatre* referred to a perennial problem regarding the equal right to employment that has long been concerning the public, and *Zhang Xianzhu v. Personnel Bureau* touched upon systemic discrimination against HBV carriers. All these deeper problems presented in these lawsuits were related to citizens' constitutional rights. Consequently, the litigants invoked both substantial laws and the Constitution to reinforce their legal claims in the court. These lawsuits accompanied by media coverage and public debate not only have helped increase the public's awareness of their constitutional rights that they might not necessarily have been aware before, but also set examples to encourage more citizens to pursue their assumed constitutional rights in the court.

Another case of *Dong Jian v. the Ministry of Health* discussed earlier also concerned citizens' constitutional rights regarding the right to freedom of association. The defendant — the Ministry of Health (MOH), repeatedly refused to accept the plaintiff's written applications to establish a CSO on the grounds that his application documents did not meet its requirements. This wording, of course, hardly convinced the plaintiff and the public. If it had intended to sincerely deal with Mr. Dong's application, it should have told him about what materials he was supposed to submit rather than just making a phone call without a detailed explanation.

In terms of the Constitution, it should never be a problem because it expressly grants citizens "the right to freedom of association" in its Article 35. The MOH did not deny this, but made excuses of procedure to hamper Dong Jian from exercising his rights. As a matter of fact, although this litigation did not put the right to freedom of association on the table, most media outlets concentrated on this subject rather than the administra-

tive nonfeasance in this case. For example, a commentary in *Beijing Times* (Shi 2006) remarks this litigation as follows:

This is a lawsuit lodged by a citizen who hopes to exercise his right to the freedom of association. However, the current double checking policy sets an unreasonable restriction over social organization application. The representative lawyer of the plaintiff wished that this case could become an attempt to break the “legitimacy dilemma” in establishing social organizations [quotation marks in original].

Another commentary in the *South Reviews* (Yao 2007) also stressed the significance of this litigation to the rule of law and called for realizing the right to freedom of association under the law:

This is a significant lawsuit relevant to citizens’ right to freedom of association in the course of building constitutional governance and the rule of law in China. In the meantime, it also demonstrates that the right to freedom of association must be guaranteed through administrative litigation.

In a sense, this litigation became a noticeable attempt for civil society to advance the right to freedom of association, which has helped the public aware that any decision or policy or regulation impeding citizens from exercising their legitimate rights is legally groundless. At the same time, the public have seen from the case the hypocrisy of the Party over citizens’ constitutional rights, because it has enacted relevant legislations to recognize the right to the freedom of association on the one hand, but hampered citizens from exercising their rights in reality on the other hand. That is to say, such influential lawsuits are conducive to enlightening the public of their legitimate rights. As a lawyer commented in the interview:

Some public interest lawsuits concerning citizens’ constitutional rights looked like a kind of enlightenment, which helped raise ordinary citizens’ constitutional consciousness and make them

aware that they are entitled to enjoy their rights written in the law (IC13).

Summing up, a number of high-profile PIL cases related to constitutional rights in this research have exhibited that Chinese citizens are increasingly scrutinizing the government by demanding a legal and constitutional basis for its policies, decisions and acts. This legal activism will not only further increase citizens' awareness of their constitutional rights, but also advance constitutional development and constitutional governance in China.

## **5.2 Contributing to Reshaping State-Society Relations**

Another effect of PIL connected with the first point above is that it is conducive to reshaping Chinese citizens' perception of state-society relations on a number of counts during the socio-economic transition. In a sense, the rights consciousness of citizens is, to a certain extent, dependent on the comprehension and perception of their relationship with the state.

It is well known that one of the most important social, cultural and political legacies in China's long history is the dominant influence of Confucianism (Gan 2006, 13). According to Confucius, filial piety is a fundamental obligation, which constitutes a set of basic relationships between sons and fathers, wives and husbands, subjects and rulers. In his words (*Confucius* 2012, 113): "The emperor is the emperor, the minister is the minister, the father is the father, and the son is the son". To put it another way, hierarchy between old and young, respect and respected are destined, so inferiors must unconditionally follow their superiors. Confucius considered this relationship of absolute obedience to the authority as a justified social order. Based on this assertion, he went on to state that "All of the land under the Heaven belongs to the king, and all of the people to the boundary of the earth are the king's subjects" (*ibid*). That is to say, the king or emperor enjoys supreme authority, whereas ordinary populace or subjects in ancient China did not even have their own land and property, let alone individual rights. As this doctrine highlights the authority of rulers by fundamentally excluding individual rights, it has been honoured above all other schools of thought by the ruling class in ancient Chinese history (Gan 2006, 37).

In Mao's era after the CCP assumed power in 1949, it has followed Leninism doctrine by advocating the principle of "Democratic Centralism", which claims in Article 10 of the Constitution of the Communist Party of China (Zhongguo 2012):

Individual Party members are subordinate to the Party organization, the minority is subordinate to the majority, the lower Party organizations are subordinate to the higher Party organizations, and all the constituent organizations and members of the Party are subordinate to the National Congress and Central Committee of the Party.

While this kind of "Democratic Centralism" mainly aims at the members and organizations of the Party, ordinary citizens' personal rights and freedom are also restrained. In the Party's rhetoric, individuals are simply regarded as so-called "screws" that can be tightened wherever the Party considers suitable. For such restriction of individual rights and freedom, Lucian W. Pye (Pye 1991) has concluded:

It could be that no people have ever outdone the Chinese in ascribing moral virtues to the state or in deprecating the worth of the individual. First Confucianism and then the Chinese version of Leninism went all out in extolling the importance of rulers and society and in minimizing the rights of individuals.

According to Zhou (2013, 133-134), the government institutions in Chinese history over the past 2000 years before the CCP came to power were set up at county level. The governance in wider rural areas was dependent heavily upon local gentry-landlord class (see also Zhao 2002). Since 1949, especially after mid-1950s, the totalitarian state power has extended to villages in rural area, and streets and units in urban area so that the state political power covered and controlled the whole society. As it monopolized almost all economic, social and political resources, there was less room left for civil society in Mao's era. In the meantime, Chinese education has long instilled the populace's obligation and obedience to rulers rather than keeping them informed about their entitlements. Under such circumstances, ordinary people are normally obedient to the authorities. They prefer to use other means rather than law to resolve disputes as they believe in the

maxim handed down from ancient times that ordinary people cannot sue officials. As McCutcheon (2000, 160-61) has noted:

Millennial and powerful traditions emphasize the guidance of human behaviour through internalized moral standards rather than external rules of law, and favour informal means of compromise over formal adjudication of disputes. In spite of more recent major changes, these traditions still maintain some influence today.

It is admitted that this thinking continues to influence our society. Chinese citizens still have trust in government and often unconditionally justified government decisions and policies, even though these decisions and policies might be unfavourable to their interests. PIL practitioners apparently disagree with this way of thinking and, through their litigation, reveal flaws in public policies and areas in which laws and administrative regulations have not been properly implemented. This critical thinking is one way to help the public deepen their understanding of their rights and government responsibility.

For instance, the case of *Huang Jinrong v. China Insurance Regulatory Commission* (case 43) questioned whether the government watchdog had performed its duty to oversee the insurance industry. The cases of *Zhang Xianzhu v. Personnel Bureau of Wuhu City* (case 13) and *Chang Lu v. Taxation Bureau of Hunan Province* (case 39) tackled discriminatory policy against HBV carriers in employment. The case of *Qiao Zhanxiang v. the Ministry of Railways* (case 5) complained about arbitrarily marking up train fares during the Chinese New Year. All these lawsuits highlighted government malfeasance or nonfeasance in some public policies regarding citizens' rights and interests, which may have established the idea in the public mind that government policies and decisions are not always in the public interest, and some of them may even harm public interest. That is to say, the public are entitled to query the government and critically examine its decisions and policies. A lawyer put it this way in the interview:

It is difficult for us to change some unfair policies, but we can at the least help the public learn something from public interest lawsuits we lodged that there are always some room in gov-



ernment work that needs to be improved. Maybe this is one of our contributions to the rule of law (IC20).

What is more, some lawsuits such as *Jiang Yan and Others v. the Ministry of Education* and *Huang Yuanjian v. the National Grand Theatre* targeting education and employment discrimination under the notorious household registration system might have encouraged the public to think about the root causes of these issues. Therefore, PIL is deemed to open up “new political and institutional spaces for interest and grievance articulation” (Lee 2004, 71). These PIL cases, regardless of being successful or unsuccessful in the courts, have affected the way that citizens look at the state-society relations as well as shown the public that it is possible to question the government and its public policies, which may lead to more public participation and better governance. Most importantly, they are conducive to reshaping and reconstructing state-society or state-citizen relations in the direction of democracy and rule of law.

### **5.3 Encouraging Legal Struggle to Advance Rights**

PIL has not only made the public aware of their legal rights, but also encouraged them to advance their rights through legal struggle, which is the third effect that it has on the Chinese society. As regards the protection of individual rights, more than 100 years ago, Rudolf von Jhering (1915, 24), a prominent German jurist, stressed the importance of engaging in legal struggle:

Whenever a person’s legal right is violated, he is placed face to face with the question, whether he will assert his right, resist his opponent — that is, engage in a struggle; or whether, in order to avoid this, he will leave right in the lurch.

In his view, a person either gives up his legal right or struggles for it in the face of rights violation. He thus encouraged individuals to struggle for their rights. PIL practitioners in China obviously agreed with his opinion and have just done what he suggested. For instance, Hao Jinsong filed three consecutive lawsuits pertaining to consumer rights against the railway authority and eventually won the case. He (Zhou 2011) made such comments in an interview:

As for rights, a crucial prerequisite is that people must prepare to assert their rights at any time. If nobody did it, his or her rights would remain on the paper. If you do not protect some of your rights you lose today, you will lose more tomorrow.

As aforementioned, the party-state has enacted numerous laws and administrative regulations since the early 1980s. No matter whether it implemented them wholeheartedly or half-heartedly, these laws have at least provided Chinese citizens with legal grounds to engage in legal struggle, which may directly or indirectly affect the dispute-resolving that can be seen in a number of notable cases discussed in this study.

First, legal struggle in the form of PIL may directly lead to dispute resolution. In the *Hao Jinsong* series of cases, for instance, the plaintiff kept on his legal struggle against the railway authority for his legitimate rights. In spite of the fact that he lost twice in the court, he did not give up hope in that he believed that the law was on his side. At last, he won the case, which compelled the railway authority to provide railway passengers with receipts.

The case of *Du Baoliang v. Traffic Police Detachment* is another example of how a citizen made sense in fostering the law enforcement authority to improve its work. Just one month after the claimant filed the lawsuit, Beijing Traffic Management Bureau announced in a press conference that it would adopt eight measures to improve traffic management and law enforcement in Beijing, which included the improvement of the notification system to ensure traffic violators receive a warning notice in time. This litigation was thus hailed as a case of an unknown person having great impact on improving traffic management in Beijing (Yu 2005). In the words of Fu and Cullen (2009, 20): “Increasingly, law is providing a legal instrument — a sword — which allows citizens pre-emptively to hold the government accountable.”

The case of *Zhu Mingjian v. Dongguan Public Transport Company* also demonstrated how a disabled person employed the law to defend his rights. The claimant in this case cited a provincial legislation promising disabled persons take public bus free-of-charge under its provincial jurisdiction to challenge the defendant who invoked a local legisla-

tion that denied non-local disabled persons from travelling free-of-charge on public bus in the City of Dongguan. The court mediated the two parties to reach a settlement in favour of the plaintiff. By filing this suit, Zhu Mingjian not only defended his personal rights, but also showed his fellow men how to struggle for their rights using the law.

Second, the legal struggle in the form of PIL may also indirectly affect the way that the government and state-owned enterprises tackle public complaints. A few lawsuits discussed in this study exhibited that even though they were dismissed or lost in the court, they still made sense in accentuating some perennial social problems and compelling concerned authorities to re-examine their controversial decisions and policies. As Hershkoff (2009, 175) has remarked:

[...] even if a particular lawsuit fails to secure immediate relief or is slow in its implementation, litigation may nevertheless be an important step in a series of backward and forward steps toward reform.

Take some cases for example. In *Qiao Zhanxiang v. the Ministry of Railways*, While this litigation did not succeed in the court, it was still a landmark case, because it achieved an unexpected outcome: promoting the development of the public hearing system in China. Since then, holding a public hearing before the price adjustment of public utilities such as water, electricity and gas has become a routine procedure. Although it was often criticized as just a public show, because its attendees and outcome were said to be manipulated by those in charge of public hearings (Lin 2013), it can still be considered some procedural progress in government work in that the administration now at least must follow certain procedures that they did not have to do in the past.

In the case of *Jiang Yan and Others v. the Ministry of Education*, the complainants' litigation application was rejected by the SPC, but this case had already drawn public attention and sparked a nationwide debate over the university admissions policy and equal right to higher education in developed and less developed regions, which might prompt the Ministry of Education to speed up its incremental reforms in higher education area. Similarly, in *Li Gang v. the National Committee for Oral Health, and Others*,

the court's decision did not rule against the NCOH, but this government-backed association was disbanded just four months after the lawsuit was concluded.

All these litigation efforts have showed the public how to use the law to reach their objectives, which, as Fu and Cullen (2009, 23) has remarked, creates "a copycat effect whereby pioneers set examples through their actions for others to follow". In this way, successful public interest lawsuits not only "widen the scope of rights protection in China" (Pils 2009, 2), but also improve public perception of PIL as an effective legal instrument to claim rights and gain confidence in the public's ability to sue the government and state-owned monopolies for their controversial decisions and policies. In a reflection on a lawsuit he had filed, a PIL practitioner commented:

When I went to court with my courage and social responsibility, I felt I actually represented numerous affected consumers to claim rights, though in the name of my personal interests. I am sure that if everyone can stand up for his or her rights in accordance with law, we can accelerate the establishment of the rule of law in China (IC17).

It is beyond the doubt that PIL proponents insist on using the law and judicial process for their rights claim and public participation. Speaking of the exemplary effect of PIL, Hao Jinsong considered it an important driving force to embolden citizens to defend their rights through law. He (Zhou 2011) remarked it as follows:

The railway authority is such a huge bureaucracy in the eyes of ordinary people. If you can beat it in the court, it will give the public tremendous confidence in law. They will have a new understanding of law, which they might previously have considered useless.

To summarize, a number of PIL cases have displayed that if litigants take full advantage of the law and judicial system to resist rights violations, they can achieve positive results beyond their expectation in less politically sensitive fields. The data in Figure 3.2 also shows that even in current less favourable judicial environment, the total percentage

of winning and mediated PIL cases still reached 36.37%, which may further boost citizens' confidence to engage in legal struggle to advance their cause.

#### **5.4 Serving to Strengthen a Fledgling Civil Society**

The last, but not the least, effect of PIL is that it has served to strengthen a fledgling civil society in China. It is well-known that China has been a highly centralized state throughout history (Zhang 48-52). Since the early 1980s, with the transformation of planned economy to market-oriented economy, certain public sphere has emerged. However, civil society forces are still weak and fragile so that they cannot balance the state and exert much influence on decision-makers.

As discussed earlier, the Constitution and other laws granting citizens' rights such as freedom of speech, freedom of association are still on the books. The public participation or political participation is still limited and constrained (Li, *et al.*, 2010, 498). As a consequence, citizens fall short of effective means to make their voices heard and express their opinions about social issues and public policies. In this setting, PIL has provided a platform for civil society on which citizens can discuss social issues that concern them and mobilize campaigns to support ongoing litigation. This feature of PIL, as Thelle (2013, 1) has noted: "is not stressed in the Western context", because "in democratic systems there are more direct avenues for participation and civil society activities". Yet in the post-totalitarian China, PIL has become an important channel for rights claim and public participation.

First, PIL sets up a platform or public forum on which PIL proponents and other like-minded people can get together to exchange information and have a discussion around ongoing litigation and relevant topics manifested in these lawsuits, through which some consensus can be reached. As Froissart (2014, 14) has observed:

PIL has become a powerful means to influence political decisions by igniting public debate and a forum where contending interests and points of view can be expressed as long as they do not challenge the state and the Party authority.

For instance, the case of *Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China* sparked a robust public discussion over such questions as whether such a discretionary charging policy creates a monopolistic market? Is it fair competition to take advantage of the government endorsement? What role should the government play in business-related activities? The litigation or court here acted as a forum for public debate and information exchange through which people from all walks of life expressed their opinions and made suggestions (Xu 2008, 299). This is what Pei (2004, 39) has described:

As an institution of the state, the court is often identified as an instrument of domination. But ironically, under certain conditions the court can sometimes be converted into a forum where acts of resistance may be performed at relatively low cost.

Second, PIL has also been utilized to mobilize campaigns outside the courtroom to support litigants and their cause. Such campaigns about legal proceedings aim at garnering social attention and public support as well as exercising pressure on relevant government departments and the judiciary over controversial public policies. As Liebman (2007, 633-634) has noted:

The use of litigation to create pressure and to compel extra-judicial action is not unique to China, but China may be distinct in its extreme reliance on extra-judicial responses to major public disputes in the courts.

A typical example was illustrated in the case of *Zhang Xianzhu v. Personnel Bureau of Wuhu City* in which the plaintiff suffered from employment discrimination as an HBV carrier, which created an opportunity for HBV carriers to work with media, law scholars and other civil society actors to lobby for their equal rights.

Once this litigation was exposed by the media, it immediately became a rallying point for HBV carriers who mobilized around an online bulletin board called “Heart to Heart” (*gandan xiangzhao* 肝胆相照) that aims to the dissemination of HBV-related information and knowledge. By way of this online forum, they commented on this lawsuit,

posted relevant news and commentaries in the press, provided the plaintiff with suggestions for his litigation tactics, and called on other HBV carriers to attend the trial to show support for the claimant.

Moreover, they submitted a petition signed by 1,611 citizens including medical experts, law scholars, lawyers, and representatives of the NPC and members of the CPPCC, to the NPC Standing Committee, and Law Committee of the NPC Standing Committee (Xiao 2003). In the petition, they requested a constitutional review of the legality of the Interim Provisions of the State Civil Service Recruitment, and the Physical Examination Standard for Civil Service Recruitment in 31 provinces, municipalities and autonomous regions, because they held that it was such legislation that led to employment discriminate against HBV carriers (*ibid*).

This well-organized campaign that combined online and offline citizen activities around the anti-discrimination litigation turned out to be successful in that it not only helped the complainant obtain a favourable ruling in the courtroom, but also encouraged more copycat lawsuits over this long-standing problem. In the wake of this case, there occurred a succession of similar litigation in several other provinces, including *Zhu Xiaoyan v. Personnel Bureau of Tongshan County* in Jiangsu Province (case 24), *Chang Lu v. Tax Bureau of Hunan Province* (case 39), and *Bai Xiaoyong v. Henan Financial and Economic College* in Henan Province (case 41), etc. All these lawsuits demonstrated the sufferings that HBV carriers has experienced, which have played a part in spurring concerned authorities to put this issue on their agenda and change some discriminatory policies against HBV carriers.

It was reported that some provincial governments like Zhejiang, Sichuan, Fujian and Guangdong Provinces rescinded their local administrative regulations barring HBV carriers from applying for civil service position (Du 2005). In July 2004, the Ministry of Personnel and the Ministry of Health jointly enacted the General Standards on Physical Examination in Employment of Civil Servants (Trial), expressly stipulating that HBV carriers who have normal liver function cannot be rejected from employment by any employers (Zhou, *et al.* 2006, 319).

In addition to the revision of the administrative regulations, the legislature likewise began to pay attention to this issue, and added an anti-discrimination provision concerning infectious disease carriers in the Law on Promotion of Employment, which was promulgated in August 2007 and implemented in January 2008. Article 30 of this law prescribes as follows:

When an employing unit recruits a person, it shall not use as a pretext that he is a pathogen carrier of an infectious disease to refuse to employ him.

In terms of these positive responses from the court, administration, and legislature, this civil society action achieved considerable success. In fact, to realize litigation objective and bring social issues under the spotlight, such cooperation between litigants, media and other social actors can also be seen in other cases. By means of these civil society activities, citizen activists have gained experience in collaboration and organization that will be valuable for their future rights protection activities. These successful attempts will also reinforce an emerging civil society in China. Hence, this case has far-reaching influence as a law scholar (Li 2005, 32) commented:

In terms of its far-reaching implication, this case has enlightened citizens' awareness to care about their living conditions, and strive for democracy and the rule of law. It will also encourage more rights protection activities.

Put simply, PIL has played an important role in fostering public participation, expanding public sphere and cultivating civil society forces in China. Meanwhile, it has also promoted the interaction between the state and civil society. To be sure, to promote policy and social change is a long-term process, which, PIL proponents are fully aware as a lawyer said in the interview:

Nothing will be changed in just a few years, but doing something at our best may make a difference someday, which requires our patience, persistence and a long-term commitment (IC7).



## 5.5 Concluding Remarks

During the whole process of PIL, including litigants submitting their litigation application, the court accepting or dismissing litigation application and making a decision, and the media covering on-going litigation, such legal action demonstrates the public how to perceive their rights, and how to get access to the judiciary for their legitimate rights. It is noted, nonetheless, that the analysis above does not suggest a direct correlation between PIL and its outcome because the impact of PIL is a complicated process as discussed above. In fact, even some successful lawsuits might have other explanations. What is important in evaluating PIL is not to overestimate or underestimate this type of litigation. It is admitted that most of the time, PIL merely serves as a catalyst for some policies adjustment and change. Of course, on the other hand, we may say that those positive responses and changes after litigation mentioned in this research might have not happened if PIL practitioners had not made every effort to promote them. For this, Guo Jianmei (2009, 375), has suggested:

In reality, it is the joint force of many public interest lawsuits and social events that brought about the reform of laws or the change of an undesirable status quo.

In a nutshell, PIL is considered to be significant in China because it not only aims at unjust and unfair social phenomena that concern the public, but also advances the idea of the equality before the law that is crucial to cultivate citizens rights awareness; it not only directly or indirectly contributes to the development of the rule of law, but also deepens the understanding of current state-society relations; it is not only because of its important role in the advocacy of social justice and protection of disadvantaged groups' interests, but also because of its aggregate impacts on the encouragement of legal struggle and civil society activities. It is this citizen resistance in the form of PIL that has provided more possibilities and opportunities for rights protection and public participation in the socio-economic transition.

## Conclusions

The Party v the people

— *The Economist* (2014)

Since the end of 2015, a new phrase – Zhao family (*Zhao jia ren* 赵家人) – has suddenly become a popular term in Chinese social media. Zhao is the most common surname in China, but as a political catchword, it originates from a character in a novella entitled *The True Story of Ah Q* by Lu Xun (鲁迅), a well-known 20<sup>th</sup> century Chinese writer, critic and essayist. In this novella, Mr. Zhao was a prestigious landlord and Ah Q a lowly peasant who shared the same surname with Mr. Zhao. Ah Q tried to raise his social status by association with his master, but was dismissed. The term “Zhao family” recently has acquired a new meaning referring to politically powerful and wealthy families, which are direct descendants of the generation of the CCP leaders (Allen 2016).

This catchword has profound social and political implications because it not only demonstrates public scorn for the party-state, but also displays the widening chasm between the state and society or between the Party and people. By keeping this background in mind, we may have a better understanding of citizen resistance in its various forms in China today.

Looking back at the emergence and development of PIL in China over the last twenty years, it is beyond doubt that it has played a positive role in the Chinese people’s struggle for rights protection, social justice, and the rule of law by involving wider social, economic, educational and environment-related fields. Taking advantage of the new legal opportunities created by the economic reform and social development, PIL practitioners actively claim their rights, voice their concerns about social issues, and keep an eye on the government and vested interests. In doing so, they have made their marks on the road towards the rule of law in China. Consequently, there are many explanations or interpretations about PIL, given its increasing importance and influence on society. This

study, which examines PIL from the perspective of citizen resistance, is simply one of them. Compared to the dynamic practices of Chinese citizens in pursuit of social justice and rights protection by means of PIL, this research is surely not a complete picture, but it may help facilitate the understanding of why and how Chinese citizens have been vigorously and persistently engaging in this legal action in the post-totalitarian setting.

First of all, PIL is emblematic of the growing awareness of rights among Chinese citizens who are increasingly taking their rights seriously and assertive of their rights enshrined in law. In the view of Xu (2009, 300), this tendency to claim assumed rights will not stop just because of some rights that have been realized. On the contrary, people will become aware of other rights they are supposed to have along with their achieved rights, which will certainly further encourage them to struggle for more rights. Meanwhile, as a citizen legal action, people from broader social groups and social strata have persisted in using the law and legal institutions to resist rights violations, further social justice, and promote policy and social change. Over the course of PIL, they have demonstrated a high degree of social responsibility and citizen initiative. Obviously, PIL is often an exhausting and time-consuming litigation process with a lower winning probability in the court for claimants. If they did not possess the sense of social justice and spirit of sacrifice, they would not have engaged in such citizen legal action that often goes beyond their individual interests.

Second, the emergence and development of PIL is the outcome of the dynamic interaction between a wide range of social, economic, political and legal factors over the years, which include the growing public demand for social justice, a relatively workable legal framework, an increasingly raised legal and rights consciousness among the public, and the willingness to seek a compromise between stability maintenance and rights protection. All these contextual factors have prepared the seed-bed for this spontaneous and popular citizen legal action. In the words of Ho (2008, 20), this kind of social activism “features a formal structure of stringent state control that deviates from informal practices, which actually allow a fair degree of voluntary civic action”.

Third, PIL is a moderate legal action in less favourable political milieu in which the party-state cracks down on any organized civil society activities viewed as the threat to its one-party rule. Faced with this situation, PIL litigants do not seek to confront the

authorities head on. In contrast, they are mostly focused on non-political issues and try to get the law implemented in less politically sensitive areas, especially in social, economic and environmental spheres. They also scrupulously frame their litigation claims in conformity to official discourse through which to solicit the support from the public and elites. Meanwhile, in the absence of an autonomous judiciary, PIL litigants have demonstrated their non-confrontational strategy and flexibility to resolve disputes with their powerful adversaries. In this regard, we may say that PIL is a mixture of resistance and compromise as it has provided an alternative channel for Chinese citizens to seek social justice and rights protection.

Fourth, as one of the “weapons of the weak” (Scott 1985), PIL alone is not enough to reach its objective in the face of judicial inaction. Rather, it, to a large extent, depends on widespread media coverage to mobilize public opinion and galvanize public support to pressure concerned authorities and vested interests. Therefore, the social effect of PIL, no matter whether it is direct or indirect, mainly lies in media coverage and public opinion.

There is currently a popular saying to describe this sort of eyeball effect called: “On-lookers change China” (Xiao 2010). In a news commentary in *Southern Weekend*, the commentator argued that the public opinion around public incidents is increasing important because a wide range of individual voices are helpful to make citizens gradually aware of their strength as well as to make the public power restrain its arrogance (*ibid*). To put it another way, public opinion can exert potent pressure to compel authorities to make concessions at times. In a sense, any effort to comprehend PIL should take the role of the media into account, because it is often media coverage of PIL that gives litigants bargaining chips. It can be assumed that in the absence of pressure from the media and the public, even some small changes regarding consumer rights, employment equality and government information disclosure in cited cases in this study might not have happened.

Fifth, the Party has expressed contradictory attitude toward PIL — a citizen legal action and one of civil society activities. In light of the attitudes and tactics that the party-state deals with PIL elaborated in this dissertation, it is obvious that it is unwilling to encourage PIL that may challenge its authority, nor does it intend to suppress it because of its

moderate nature and the Party's consideration of balance between stability maintenance and rights protection. As Shambaugh (2016, 69) points out: "The Chinese government and Communist Party have always had an ambivalent relationship with this domain of social activity..." He (*ibid*) goes on to argue:

To some extent the authorities were tolerant of the growth of civil society, to some extent they tried to control it through co-optation (forming government-organized non-governmental organizations or GONGOs), but to a large extent the rapid enlargement of private civic activities simply outpaced the government's watchful eyes and repressive instruments [parentheses in original].

This elucidation about the authorities dealing with civil society is also applicable to the ways it tackles PIL. As discussed in this study, the party-state leaves room for PIL proponents, and sometimes made partial concessions in a few high-profile lawsuits. Yet it sets up a number of visible and invisible obstacles to restrict the development and influence of PIL.

Sixth, in connection with the previous point, PIL is indeed a challenge to the authorities despite being moderate and not politically-oriented. Under the post-totalitarian regime, any grassroots legal action or voluntary civil society activity, regardless of whether it involves in charity, anti-corruption or rights protection, may be considered as a challenge in the view of the authorities. In the same way, once PIL practitioners call for rights protection, social justice and the rule of law, they are virtually involved in citizen resistance no matter whether they admit it or not, because such legal action challenges the status quo in one way or another. The growing number of public interest lawsuits signals that Chinese citizens are increasingly discontent with the status quo and seeking available channels including PIL to foster policy and social change, which will certainly exert more pressure on the authorities in the near future. In the words of Shambaugh (2016, 71):

The struggle between the party-state and society over civil society (and the public sphere more broadly) is only going to

grow more contentious over time, and will become one of the key pressure points on Party rule over the next decade [parentheses in original].

While PIL has played an important part in furthering social justice and rights protection, it carries unavoidable limits in a one-party system under which the Party is still above the law with assertion of its rule of law with Chinese characteristics as discussed in the introductory chapter. This inherent contradiction in the Party's understanding of rule of law makes authentic rule of law in China very difficult for the time being as Li (2010, xxi) remarks:

The CCP is reluctant to tolerate any significant diminution of its authority, and thus the Party Centre continues to use the law as an instrument to hold unchecked power rather than creating a regime that protects citizens' rights.

In this situation, further development of PIL in China depends significantly on broadening and deepening legal and political reform that will create a more favourable political and legal environment for citizens to defend their rights by making use of the law. As a matter of fact, not only legal development, but also plenty of other social problems and challenges facing China today are bound up with political reform that has severely lagged behind economic development. For this, one has to agree with Cai (2010, 89) who has asserted:

Political reform will be necessary to overcome these challenges. Without truly significant reform, China will not be able to overcome existing or future challenges to sustaining its economic and social development, nor will it build a democratic society with rule of law that protects human rights.

In a nutshell, this study contributes to the understanding of why PIL is considered as citizen resistance in contemporary China, and how citizens have made use of the law and judicial system to claim their rights enshrined in law. Broadly speaking, in the post-totalitarian setting, PIL provides citizens with a less risky channel to resist rights viola-

tions and make their voices heard. This citizen resistance in the form of PIL is playing an active part in increasing public awareness of constitutional rights, contributing to reshaping state-society relations, encouraging legal struggle to advance rights, serving to strengthen a fledgling civil society, carving out a larger public sphere, and promoting progressive socio-legal development in the socio-economic transition. Over the course of PIL, Chinese citizens have also demonstrated their strength and wisdom to confront social injustice and inequality. With reference to the strength of the people and the driving force to foster social progress, Wen Jiabao (CNN 2010), the former Chinese Premier, once made an insightful and enthusiastic comment in an interview:

It is the people and the strength of the people that determine the future of the country and history. The wish and will of the people are not stoppable. Those who go along with the trend will thrive, and those who go against the trend will fail.

Indeed, it is the people who will “determine the future of the country and history”, which has been repeatedly testified throughout Chinese history. As for PIL, in terms of the entire landscape of the Chinese people’s struggle for their rights over the years, it is only a small part of the picture, but it is still an important component of it through which we can see the aspiration and the will of Chinese citizens to pursue social justice and social change from a specific perspective. It is believed that this aspiration and the will of the Chinese people for a better and more just society will further drive China forward along the track of the democracy and the rule of law in the future.

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## Appendix I 88 Public Interest Litigation Cases (1996 – 2012)

No.	Case	Summary of the Case	Category	Year	Outcome for Plaintiff
1	Qiu Jiandong v. Post & Telecommunications Office	Dispute over long-distance phone call rates	Consumer rights protection	1996	Withdraw
2	Wang Ying v. Alcohol Brewery	Dispute over alcohol signs on the package	Consumer rights protection	1998	Dismissal
3	Ge Rui v. Zhengzhou Railway Bureau	Dispute over public toilet fee inside the railway station	Consumer rights protection	1998	Won
4	Du Wen and Others v. Bureau of City Planning	Dispute over new residential compound project	Environmental Protection	2000	Dismissal
5	Qiao Zhanxiang v. the Ministry of Railways	Dispute over due procedure for ticket fare increase	Consumer rights protection	2001	Lost
6	Jiang Yan and Others v. the Ministry of Education	Dispute over university admissions policy	Equal treatment against discrimination	2001	Withdraw
7	Shi Jianhui and Another v. Bureau of City Planning	Dispute over sightseeing platform	Environmental Protection	2001	Rejection
8	Jiang Tao v. Chengdu Branch of the People's Bank of China	Dispute over height requirement in employment recruitment	Equal treatment against discrimination	2002	Rejection
9	Chen Faqing v. Environmental Protection Bureau	Dispute over dust and noise pollution	Administrative nonfeasance or malfeasance	2002	Dismissal
10	Zhang Jiaxian and Others v. Tourism Management Committee of Emei Mountain	Dispute over entrance fee	Equal treatment against discrimination	2002	Dismissal
11	Jin Kuixi v. Bureau of City Planning	Dispute over new residential compound project	Environmental Protection	2003	Rejection
12	Chen Faqing v. Environmental Protection Bureau and Another	Dispute over administrative nonfeasance in environmental protection	Administrative nonfeasance or malfeasance	2003	Rejection
13	Zhang Xianzhu v. Personnel Bureau	Dispute over employment discrimination against the HBV carrier	Equal treatment against discrimination	2003	Won
14	Zhu Yanling v. Nestle China Co., Ltd.	Dispute over transgenic ingredients contained in Nestle products	Consumer rights protection	2004	Dismissal



15	Qiu Jiandong v. Xiamen Airlines Co., Ltd.	Dispute over airport construction fee	Consumer rights protection	2004	Dismissal
16	Hao Jinsong v. the State Administration of Taxation	Dispute over administrative nonfeasance	Administrative nonfeasance or malfeasance	2004	Dismissal
17	Hao Jinsong v. Beijing Subway Operation Co., Ltd.	Dispute over receipt	Consumer rights protection	2004	Won
18	Hao Jinsong v. Beijing Railway Bureau	Dispute over receipt	Consumer rights protection	2004	Dismissal
19	Hao Jinsong v. Beijing Subway Operation Co., Ltd.	Dispute over deficiency in subway station design	Consumer rights protection	2004	Dismissal
20	Yi Benyao v. Education Committee of Fengtai District	Dispute over registration of a migrant workers' children school	Administrative nonfeasance or malfeasance	2004	Lost
21	Yu Shanlan v. Beijing Branch of the Industrial and Commercial Bank of China	Dispute over overcharge	Consumer rights protection	2004	Won
22	Song Dexin v. Henan Provincial Expressway Development Co., Ltd.	Dispute over expressway toll	Consumer rights protection	2004	Settlement
23	Hao Jinsong v. Beijing Railway Bureau	Dispute over receipt	Consumer rights protection	2004	Dismissal
24	Zhu Xiaoyan (pseudonym) v. Personnel Bureau of Tongshan County	Dispute over employment discrimination against the HBV carrier	Equal treatment against discrimination	2004	Dismissal
25	Hao Jinsong v. Beijing Railway Bureau	Dispute over receipt	Consumer rights protection	2005	Won
26	Zou Yinglai v. Beijing Education Committee	Dispute over school enrolment fee	Administrative nonfeasance or malfeasance	2005	Rejection
27	Li Gang v. Tianjin Municipal Bureau of Engineering and Administration	Dispute over expressway toll	Consumer rights protection	2005	Dismissal
28	Li Gang v. Shanghai Municipal Bureau of Engineering and Administration	Dispute over expressway toll	Consumer rights protection	2005	Dismissal
29	Li Subin v. Traffic Police Detachment	Dispute over traffic violation fine	Administrative nonfeasance or malfeasance	2005	Withdrawn
30	Zhou Xianghua v. Pingdingshan Branch of China Construction Bank	Dispute over female retirement age	Equal treatment against discrimination	2005	Lost
31	Huang Jinrong v. Beijing Railway Bureau	Dispute over compulsory insurance	Consumer rights protection	2005	Lost
32	Yang Shijian v. the Ministry of Personnel	Dispute over employment age requirement for civil servants	Equal treatment against discrimination	2005	Rejection
33	Xiong Wu v. Jinchao Taxi Co., Ltd.	Dispute over taxi fare	Consumer rights protection	2005	Dismissal

34	Wang Yong and Others v. Culiangwang Snack Co., Ltd.	Dispute over restaurant charges based on customers' social status	Equal treatment against discrimination	2005	Won
35	Hu Fengbin v. the Capital Expressway Development Co., Ltd.	Dispute over expressway toll	Consumer rights protection	2005	Dismissal
36	Li Dongzhao and Another v. Public Security Bureau	Dispute over discrimination based on provincial origin	Equal treatment against discrimination	2005	Settlement
37	Li Gang v. the National Committee for Oral Health and Others	Dispute over the authority to endorse dental hygiene products	Consumer rights protection	2005	Won
38	Dong Jian v. the Ministry of Health	Dispute over application for establishing a civil society organization	Administrative nonfeasance or malfeasance	2005	Dismissal
39	Chang Lu v. Taxation Bureau of Hunan Province	Dispute over employment discrimination against the HBV carrier	Equal treatment against discrimination	2005	Lost
40	Mr. Wang v. Shenzhen Airlines Co., Ltd.	Dispute over employment discrimination against the HBV carrier	Equal treatment against discrimination	2005	Dismissal
41	Bai Xiaoyong v. Henan Financial & Economic College	Dispute over discrimination against the HBV carrier in college admissions	Equal treatment against discrimination	2005	Settlement
42	Xu Zhiming and Others v. the Government of Yangzhou City	Dispute over equity transfer of state-owned shares	Administrative nonfeasance or malfeasance	2006	Dismissal
43	Huang Jimrong v. China Insurance Regulatory Commission	Dispute over administrative nonfeasance in overseeing the insurance industry	Administrative nonfeasance or malfeasance	2006	Dismissal
44	Zhu Mingjian v. Dongguan Public Transport Company	Dispute over the right of disabled person to take public bus free-of-charge	Consumer rights protection	2007	Settlement
45	Xiao Qing (pseudonym) v. the Ministry of Education and Others	Dispute over tuition fee	Administrative nonfeasance or malfeasance	2007	Rejection
46	Wang Liangbin v. People's Bank of China and Another	Dispute over monthly management fee	Consumer rights protection	2007	Dismissal
47	Mr. Pan v. the Bank of China	Dispute over monthly management fee	Consumer rights protection	2008	Won
48	Xintan Health and Development Research Centre v. the State Administration for Industry & Commerce	Dispute over trademark on cigarette packets	Administrative nonfeasance or malfeasance	2009	Dismissal
49	All-China Environment Federation and Another v. Dingpa Paper Mill	Dispute over industrial wastewater	Environmental Protection	2010	Won

50	Ms Zhang v. China Mobile Co., Ltd.	Dispute over the calculating cost of mobile phone bill	Consumer rights protection	2010	Lost
51	Mr. Wu v. Education Bureau of Anqing City	Dispute over employment discrimination against the HIV carrier	Equal treatment against discrimination	2010	Lost
52	Zhu Xiaofei v. China Central Television Station	Dispute over cigarette advertising on television	Consumer rights protection	2010	Dismissal
53	Lin Lihong v. Shenzhen Customs	Dispute over confiscation of personal books	Administrative nonfeasance or malfeasance	2011	Dismissal
54	Li Yan v. the Ministry of Education and Others	Dispute over government information openness	Administrative nonfeasance or malfeasance	2011	Settlement
55	Liu Yun v. Hunan Provincial Geological & Mineral Bureau	Dispute over employment discrimination	Equal treatment against discrimination	2011	Dismissal
56	Mr. Yang v. China Telecom Co., Ltd.	Dispute over spam text messages	Consumer rights protection	2011	Settlement
57	Liu Jiahui v. Southern Airlines Co., Ltd.	Dispute over discounted flight ticket	Consumer rights protection	2011	Lost
58	Zheng Weining and Another v. Shenzhen Airlines Co., Ltd.	Dispute over disabled person being refused boarding the plane	Equal treatment against discrimination	2011	Settlement
59	Zhao Shaohua v. Guangzhou-Shenzhen-Zhuhai Expressway Co., Ltd.	Dispute over service on the expressway	Consumer rights protection	2011	Dismissal
60	Procuratorate of Baoan District v. Shenzhen Liquefied Petroleum Gas Co., Ltd.	Dispute over environmental pollution	Environmental protection	2011	Settlement
61	All-China Environment Federation v. Environmental Protection Bureau	Dispute over government information openness	Administrative nonfeasance or malfeasance	2011	Won
62	Kunming Environmental Protection Bureau v. Samong Nongmu Co., Ltd. and Another	Dispute over environmental pollution	Environmental protection	2011	Won
63	Huang Naihui v. Jiangsu Provincial Pricing Bureau and Another	Dispute over expressway toll	Consumer rights protection	2011	Dismissal
64	Zhao Chaoyang v. Pingdingshan Highway Co., Ltd.	Dispute over expressway toll	Consumer rights protection	2011	Won
65	Jiang Mingliang v. Dongguan Traffic Management Office	Dispute over annual ticket	Consumer rights protection	2011	Lost
66	Procuratorate of Pinghu City v. Mengnu (Group) Co., Ltd. and Others	Dispute over environmental pollution	Environmental protection	2011	Settlement

67	Ye Maoliang v. Lanyueliang Industrial Co., Ltd.	Dispute over product advertisement	Consumer rights protection	2011	Dismissal
68	Zhu Lanying v. Chengdu Airlines Co., Ltd. and Another	Dispute over disabled person being refused boarding the plane	Consumer rights protection	2012	Won
69	Zhang Yuanxin v. Southern Airlines Co., Ltd.	Dispute over flight delay	Consumer rights protection	2012	Dismissal
70	Sun Nong and Another v. Guangdong Provincial Pricing Bureau and Another	Dispute over annual ticket	Consumer rights protection	2012	Dismissal
71	Zhao Jun (pseudonym) v. Industrial and Commercial Management Bureau	Dispute over fine	Administrative nonfeasance or malfeasance	2012	Dismissal
72	Zhao Zhengjun v. the Ministry of Health	Dispute over government information disclosure about the standard of milk quality	Administrative nonfeasance or malfeasance	2012	Won
73	Mr. Ge v. Zhengzhou telecommunications Co., Ltd.	Dispute over information disclosure about timing and billing calculation	Consumer rights protection	2012	Won
74	Wuxi Consumer Protection Association v. hot pot restaurant	Dispute over mandatory consumption	Consumer rights protection	2012	Won
75	Sun Bin v. Hunan Provincial Bureau of Environmental Protection	Dispute over electromagnetic radiation	Environmental protection	2012	Dismissal
76	Xuan Hai v. Anhui Provincial Department of Human Resources & Social Security	Dispute over employment discrimination against disabled person	Administrative nonfeasance or malfeasance	2012	Dismissal
77	Mr. Yu v. Nanjing Residents IC Card Co., Ltd.	Dispute over refund card charge	Consumer rights protection	2012	Won
78	Cai Changhai v. Roofing Waterproof Glue Factory	Dispute over river pollution	Environmental protection	2012	Won
79	Wu Chunxia v. the Street Council and Another	Dispute over restriction of the freedom of person	Administrative nonfeasance or malfeasance	2012	Won
80	Procuratorate of Haining City v. Electric Carving Plate Co., Ltd.	Dispute over river pollution	Environmental protection	2012	Settlement
81	Duan Wanjin and Another v. State Administration for Industry & Commerce	Dispute over access to enterprise data	Administrative nonfeasance or malfeasance	2012	Withdraw
82	Liu Yanfeng v. Shanxi Provincial Department of Finance and Another	Dispute over disclosure of official assets	Administrative nonfeasance or malfeasance	2012	Withdraw
83	Bai Wenping v. Public Security Bureau	Dispute over government information openness	Administrative nonfeasance or malfeasance	2012	Rejection

84	Gan Qing v. Shenzhen Branch of Wal-Mart China Co., Ltd.	Dispute over commercial fraud	Consumer rights protection	2012	Dismissal
85	Li Feng v. the Ninth People's Hospital & No. 451 Hospital	Dispute over physical examination	Equal treatment against discrimination	2012	Settlement
86	78 graduate students v. China University of Political Science and Law	Dispute over scholarship	Administrative nonfeasance or malfeasance	2012	Rejection
87	Environmental Protection Bureau of Dong Ying City v. Huayi Solvent Chemical Factory and Others	Dispute over environmental pollution	Environmental protection	2012	Won
88	600 consumers v. Beijing Dangdang Information Technology Co., Ltd.	Dispute over breach of contract	Consumer rights protection	2012	Won

Sources: Drawn by the author on the basis of the cases from *Economic Daily*, China Public Interest Law Net, China Public Interest Litigation Net, and nominated cases for China Top Ten Public Interest Lawsuits Selection 2011 and 2012.

## Appendix II Interviewee Code and Basic Data

<b>Interviewee Code</b>	<b>Working Title</b>	<b>Interview Time</b>	<b>Interview Location</b>
IC1	Law scholar	July 7, 2009	Beijing
IC2	PIL activist	July 8, 2009	Beijing
IC3	Lawyer	July 8, 2009	Beijing
IC4	PIL activist	July 9, 2009	Beijing
IC5	Lawyer	July 9, 2009	Beijing
IC6	Lawyer	July 10, 2009	Beijing
IC7	Lawyer	July 14, 2009	Beijing
IC8	Lawyer	July 15, 2009	Beijing
IC9	PIL activist	July 17, 2011	Shanghai
IC10	PIL activist	July 18, 2011	Shanghai
IC11	Lawyer	July 19, 2011	Shanghai
IC12	Journalist	July 20, 2011	Shanghai
IC13	Lawyer	July 23, 2011	Shanghai
IC14	PIL activist	July 24, 2011	Shanghai
IC15	Judge	July 26, 2011	Shanghai
IC16	Judge	July 29, 2011	Shanghai
IC17	PIL activist	Sept. 3, 2012	Beijing
IC18	Law scholar	Sept. 4, 2012	Beijing
IC19	Journalist	Sept. 5, 2012	Beijing
IC20	Lawyer	Sept. 5, 2012	Beijing
IC21	Lawyer	Sept. 6, 2012	Beijing
IC22	Journalist	July 6, 2014	Shanghai
IC23	Judicial official	July 14, 2014	Shanghai
IC24	Judicial official	July 14, 2014	Shanghai
IC25	Law scholar	July 15, 2014	Shanghai

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