

Rightful Resistance through Public Interest Litigation in China

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This article discusses the rightful resistance in the form of public interest litigation (PIL) in China from three aspects, including broader public involvement with urbanites at the forefront, challenging the government and state-owned monopolies, and an alternative channel for rights claims and public participation. The paper argues that PIL is a rightful resistance under the authoritarian regime in which Chinese people are making use of the law and judicial system to fight against rights infringement and make their voices heard.

Key Words: Public Interest Litigation, Rightful Resistance, China

Over the past three decades, the rapid economic development at the expense of the environment, social justice and citizenship rights has led to increasing popular contention in China. Public Interest Litigation (PIL) that emerged in the mid-1990s is part of this picture in which Chinese people are making use of the law and judicial system to rightfully resist against rights violators who are mostly the government and vested interests. Thus, it has become a significant social and legal phenomenon. As its connection to citizen resistance under the authoritarian government has not been fully discussed in Chinese academia, this article attempts to examine it from three aspects, i.e., broader public involvement with urbanites at the forefront, challenging the government and state-owned monopolies, and an alternative channel for rights claims and public participation. The paper concludes that PIL is a rightful resistance against the state from civil society in present-day China.

PIL in this article refers to the litigation filed by individuals or organizations aimed at vindicating citizenship rights, advocating for policy change and making voices heard based

on the ideal of social justice and rights protection (Goldston, 2006, p. 496; Hershkoff & McCutcheon, 2000, p. 283; Lin, 2008, p. 5). With regards to rightful resistance, O'Brien (1996) noted that it is a form of popular contention consisted of two intertwined aspects: it is the "resistance" (*kangzheng*) against rights infringement, whereas it is "rightful" (*hefa*) in terms of law because resisters use laws, regulations and policies issued by the state to fight against rights infringement (p. 33). Therefore, this resistance is deemed as legally and morally justifiable by both the public and elites. Examining PIL in China from this perspective, we can find their similarities. In the course of PIL, those practitioners persisted in making use of law to justify their rights claims and accusing rights violators by exploiting the gap between laws offered on paper and their poor implementation in reality. In this way, they solicited media attention and public support, as well as shielded them from political and career risk.

As litigation types in China are categorized as criminal, civil, and administrative litigation, official statistics do not count PIL cases. Therefore this research has to rely on sample analysis. The data used for this paper were mainly from three

sources, i.e., China Public Interest Law Net, China Public Interest Litigation Net, and Candidate Cases for China Top Ten Public Interest Lawsuits Selection 2011 and 2012 because those cases they published were taken as representative by professionals. There was only one case that was collected from *Jingji Ribao* (Economic Daily), which was considered as the first PIL case in China. It is acknowledged that these Chinese data sources had to be subjected to self-censorship or censorship so that they did not contain certain types of sensitive cases, e.g., land requisitions or human rights abuses, which are usually classified as rights defense cases in China. All Tables and Charts in this article were made by the author based on these cases.

Broader Public Involvement with Urbanites at the Forefront

As a citizen resistance in the form of PIL, it brought together broader social strata and social groups throughout the country with urbanites at the forefront. As shown in Table 1 below, PIL claimants came from all walks of life by occupa-

tion, including university students, lawyers, law scholars, consumers, peasants, school teachers, bank employees, government officials, journalists, civil society organizations, etc. The majority of them are urban residents or live in urban areas, which can be confirmed in location distribution of sample cases presented in Chart 1. It demonstrates that 98 percent of lawsuits occurred in large and medium-sized cities, which comprised of municipalities, provincial capitals, specifically designated cities in the national economic planning, and prefectural-level cities. There are four likely explanations for it. First, it reflects the rapid urbanization in which more and more people have moved to cities. Secondly, urban population are getting more aware of their rights and are willing to stand up for it. Thirdly, there are more social and human resources in these cities that can be mobilized to amplify the voice of PIL litigants. And last but not least, judges in cities, especially in large cities are comparatively more professional and effective.

Chart 1: Location Distributions of PIL Sample Cases 1996-2012 (N=88)

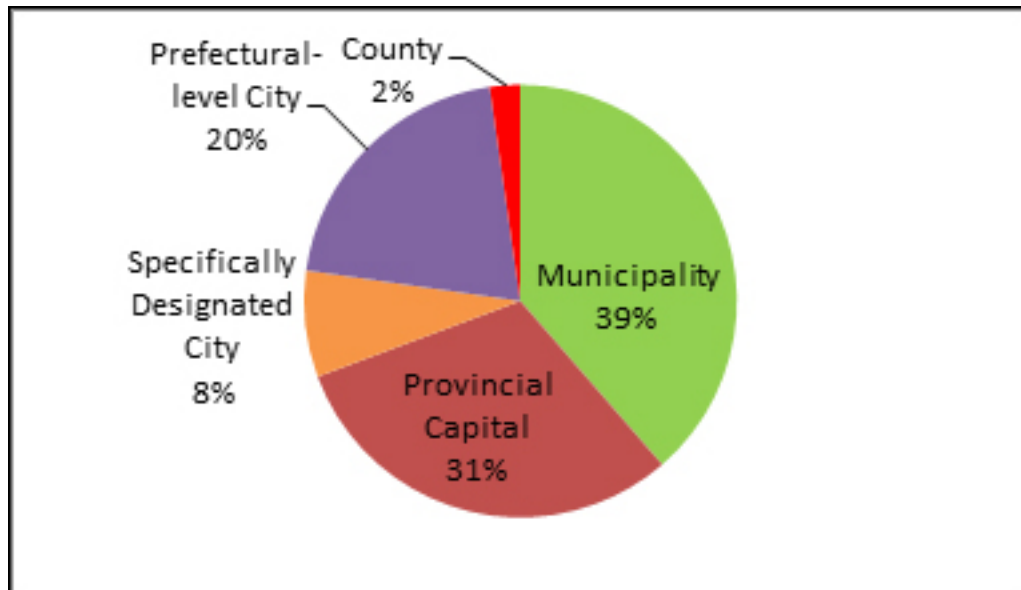


Table 1: Composition of PIL Plaintiffs 1996–2012

Plaintiff	Number	Percentage
University student	22	25.00
Lawyer	16	18.18
Consumer ^a	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 ^b	2	2.27
Retiree	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
Total	88	100

Notes:

a. The group of consumers is overlapped with other groups who are also consumers. This Table makes this category because of two reasons: (1) The published cases did not reveal the information on plaintiffs' occupation; (2) The lawsuits they filed were focused on consumer rights.

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

Among these PIL petitioners, there are two groups that deserve some attention. One is lawyers and law scholars that accounted for 25 percent. These professionals generally have better litigation expertise and social resources that other actors may lack, which is conducive to catching more public attention and achieving positive outcomes. More importantly, they are eager to make their contribution to the rule of law and social progress by means of this sort of litigation. All those interviewed by the author expressed this aspiration. Another group is university students who also held 25 percent of sample cases. Their legal activism came from their sensitive to opportunity inequality in higher education and employment as well as their vitality and courage. Of 22 lawsuits filed by them in the sample, 12 cases (54.55%) focused on equal treatment against discrimination. Some students, especially those who majored in law were anxious to apply legal knowledge they had learned in class to test the law through PIL.

Compared to other forms of contention, PIL has attracted the general public instead of a particular group. For instance, displaced people may take to the street to ask for compensation; laid-off workers may sit-in to protest corrupted managers and unresponsive government officials. However, PIL practitioners involved different social groups as presented in Table 1. The question as to why they engaged in this legal action can be answered according to different individuals and groups, but one thing is certain, i.e., they are all in pursuit of social justice and their legitimate rights enshrined in law. Hence, PIL has become “the new battlefield between state and society” (Froissart, 2014, p. 1).

Challenging the Government and State-owned Monopolies

Who is the main target of this legal action? The data in Chart 2 and Chart 3 indicates that the government and state-owned monopolies that amounted to 78.41 are two major targets. Of sample cases, nearly half of them (46.59%) sued administrative agencies at all levels from town,

Chart 2: Composition of PIL Defendants 1996-2012 (N=88)

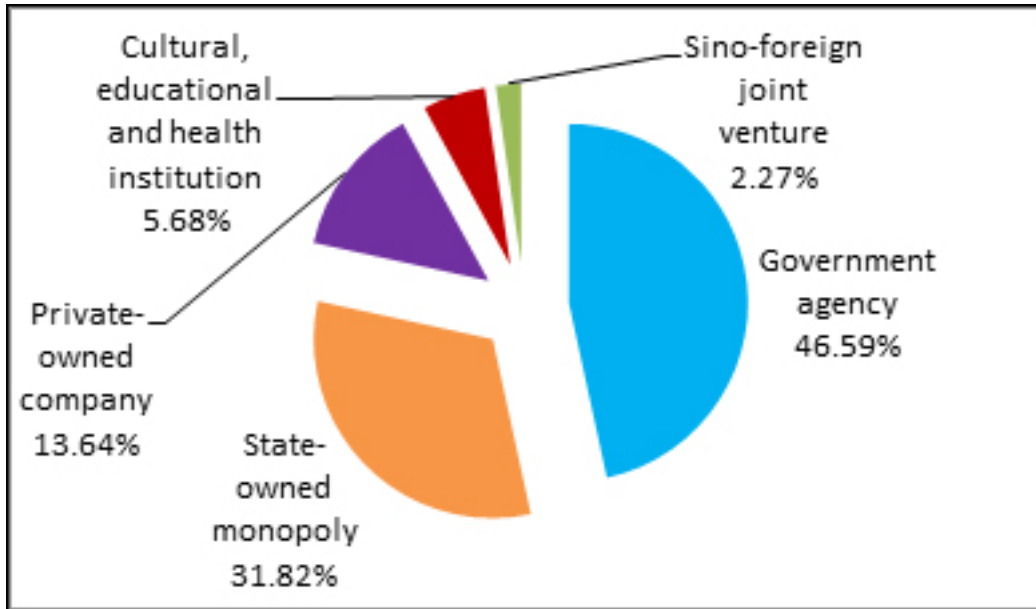
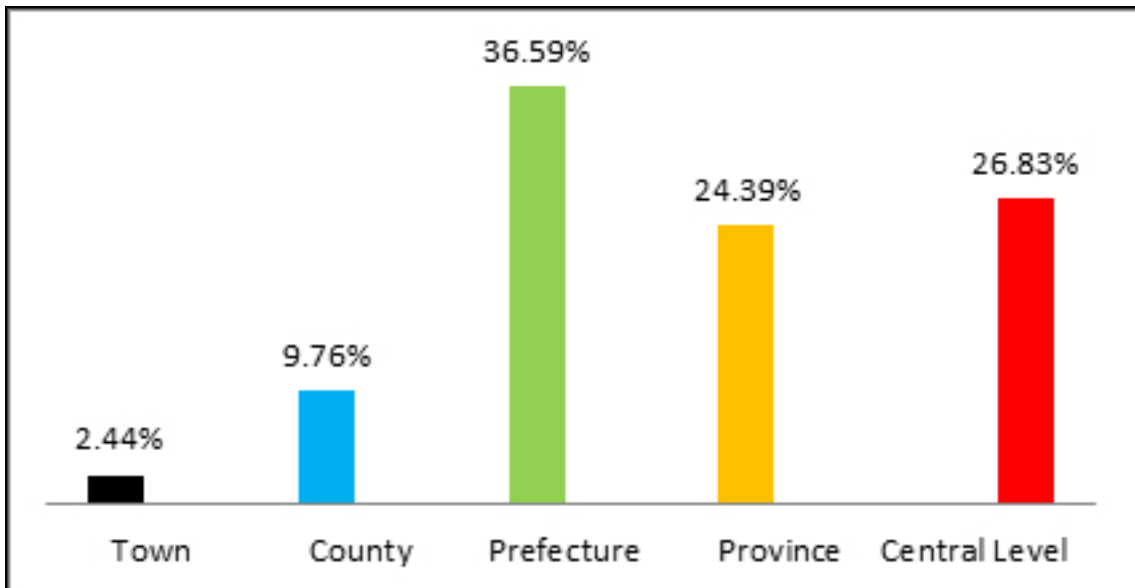


Chart 3: PIL Cases Aiming at the Government at Different Levels 1996-2012 (N=41)



county, prefecture, provincial all the way to central government for their unfair administrative decisions, discriminatory policies and refusal to disclose government information relevant to public interest. Another 31.82 percent of lawsuits charged state-owned monopolies like railways, banks and telecommunications companies for their infringement of consumer rights by taking advantage of their privileges of exclusive market access and price manipulation endorsed by concerned government supervisory entities.

This outcome should come as no surprise because a series of social issues that the public concern such as fast-rising housing prices, tainted food, rural-urban inequality, pervasive corruption and environmental pollution originate from unfair public policies, administrative nonfeasance or malfeasance, and interest groups' manipulation of market and price. As Wu (2011) pointed out that the government intervention in the market and vested interests domination over key service industries have become major problems in

China. Thus, ordinary people have increasingly distrusted the government and state-owned monopolies, as well as frequently took them to the courts and tried to make them “play their rules to themselves and abide by principles they have established” (O'Brien & Li, p. 116).

It is little doubt that PIL practitioners are trying to advance their cause by way of PIL, but this does not mean that they intend to confront the authorities head on. Instead their litigations are moderate and self-contained. They scrupulously filed those lawsuits that were “politically permissible within the authoritarian system and legally enforceable by China's weak judiciary” (Fu, 2011, p. 348) because they are aware of the fact that developing PIL depends largely on the party/state that dominates most social and political resources. Chart 4 demonstrates that almost half of litigations focused on consumer rights protection, which is perhaps the least politically sensitive area in which lawsuits about it were relatively easy to register in the courts and obtained favorable

Chart 4: Types of Cases in the Sample 1996-2012 (N=88)

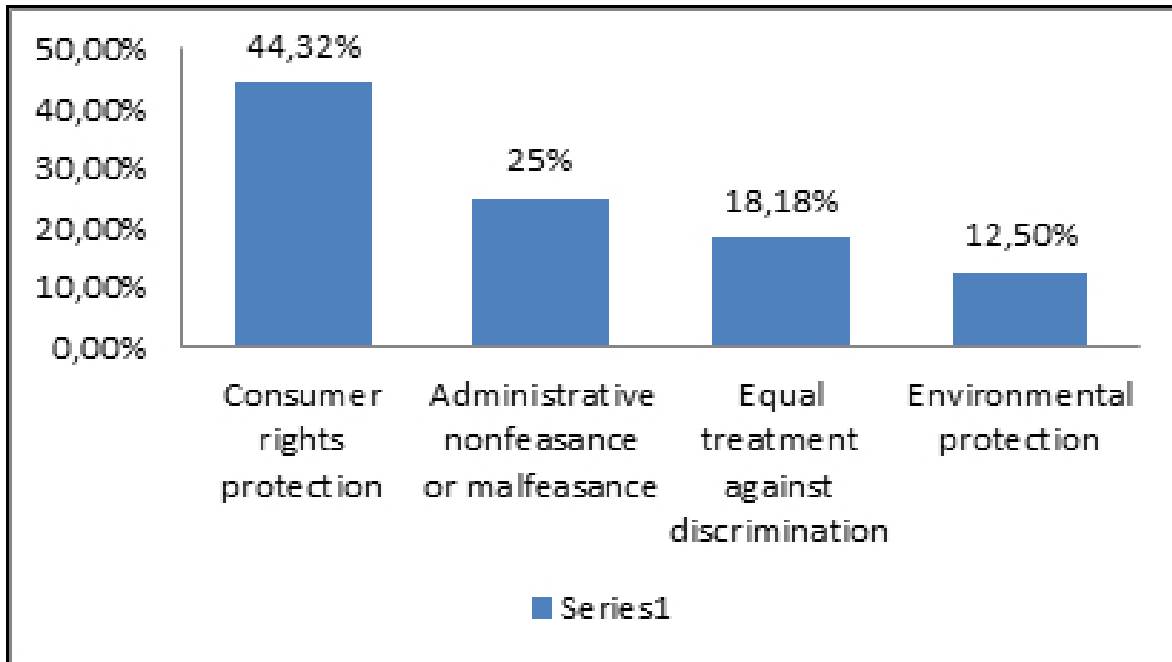


Table 2: Outcome for PIL Plaintiff in the Sample 1996-2012 (N=88)

Category (%)	Won (%)	Lost (%)	Settlement (%)	Dismissal (%)	Rejection (%)	Withdrawal (%)	Number
CRP	12 (13.63)	5 (5.68)	3 (3.41)	18 (20.45)	0	1 (1.14)	39
ANM	3 (3.41)	1 (1.14)	1 (1.14)	9 (10.22)	5 (5.68)	3 (3.41)	22
ETAD	2 (2.27)	3 (3.41)	4 (4.55)	4 (4.55)	2 (2.27)	1 (1.14)	16
EP	4 (4.55)	0	3 (3.41)	2 (2.27)	2 (2.27)	0	11
Total (%)	21 (23.86)	9 (10.23)	11 (12.51)	33 (37.49)	9 (10.22)	5 (5.69)	88 (100)

Notes:

CRP: consumer rights protection;

NM: administrative nonfeasance or malfeasance;

ETAD: equal treatment against discrimination;

EP: environmental protection.

rulings. Table 2 shows that the winning ratio for plaintiffs in this area was 13.63 percent, which is much higher than three other litigation areas even though they are less sensitive, too (3.41%, 2.27% and 4.55% respectively).

In addition, PIL litigants generally paid attention to politically safe issues such as disputes over administrative decisions, government information disclosure, compulsory insurance, employment discrimination based on height and origin rather than abuse of power or violation of human rights. Moreover, they often just claimed less politically sensitive rights like consumer rights, equal right to education and employment, right to know instead of political rights like right to freedom of speech or association. In other words, these litigation areas, issues and claims, are within the boundaries drawn by the state, though there is not a clear line of demarcation because “the government possesses the ultimate power to judge whether an action crosses its boundaries” (Shi & Cai, 2006, p. 331).

An Alternative Channel for Rights Claims and Public Participation

Since the 1989 Pro-Democracy Movement, Chinese leadership from Deng Xiaoping, Jiang Zemin, Hu Jintao to Xi Jinping has tightened political control over the society by repeatedly stressing social stability (Feng, 2013). Under the policy of preserving stability, the party/state perceives almost all legitimate demand for social reform and reasonable petitioning for grievances as the threat to the stability for which it has blocked access to a wide range of social mobilization channels such as demonstrations, gatherings, strikes and elections. Under such circumstances, the social space left for public participation is limited. On the other hand, however, along with economic development, educational process, social pluralism, increased mobility and internet popularity, Chinese citizens’ rights consciousness has been on the rise and they are keen to seek some alternative ways to advance their interests and make their voices heard. PIL is just one of a few available channels at present for three main reasons.

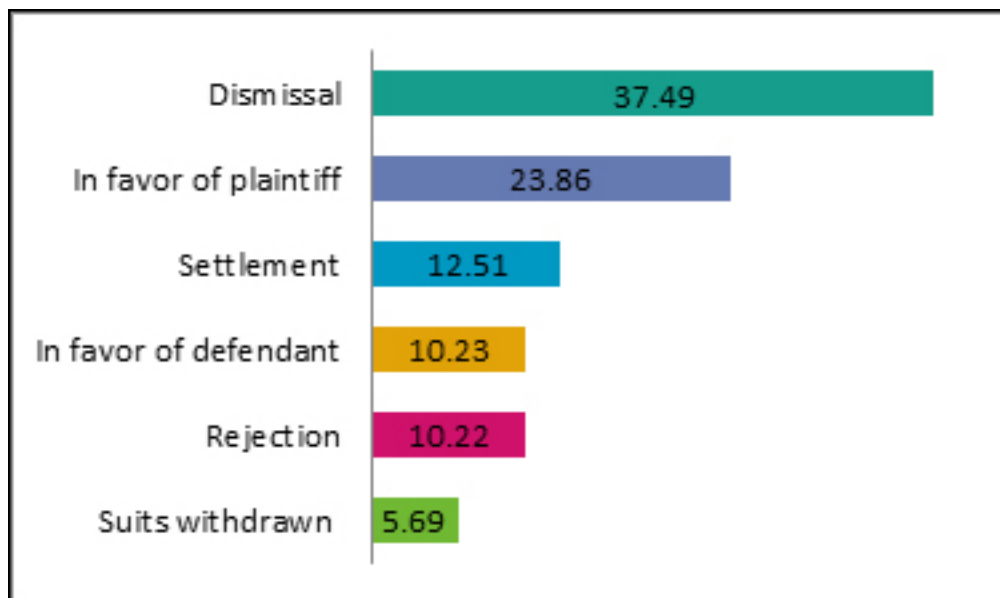
First of all, PIL is an institutional channel recognized, or at least tolerated, by the authorities which leave some room for it demonstrated in

Chart 5, which shows that 23.86 percent of lawsuits obtained favourable rulings for PIL plaintiffs, and 12.51 percent of cases reached a settlement. This ratio of winning and settlement can be deemed a considerable achievement given the reality of strong state and weak society in which if the authorities reject any claims from PIL petitioners, the latter can do nothing about it. Second, large quantities of legislations including 236 laws, 690 administrative regulations and 8600 local regulations as of the end of 2010 (China Daily, 2011) have provided either explicit or implicit legal basis that was unavailable in the past for PIL claimants to fight against rights infringement. Finally, PIL that is beyond private interests is much more likely to attract positive media coverage and mobilize public opinion which may generate pressure on powerful defendants who at times have to make concessions in order to get rid of lawsuit and spotlight as soon as possible. Thus, “for marginalized groups, litigation sometimes offers the only, or least expensive, entry into political life at a given time” (Hershkoff, 2001, p. 14).

In fact, employing PIL as a rightful means to resist against the state is not alone in China.

According to Goldston (2006), ordinary citizens in the former communist countries of Central and Eastern Europe also used PIL to challenge the authorities. In his words: “PIL was often seized upon by those who had dared to express opposition to rights violations under communism.” (p. 493). Chinese authorities may perceive this correlation between PIL and citizen resistance so that it is reluctant to see the development of this grassroots legal action and even keeps a watchful eye on it. This attitude was seen in the disposition of sample cases by courts shown in Chart 5, which indicates that 47.71 percent of litigation applications were either rejected or dismissed at the case filing stage on the grounds that they lacked substantial standing, or there was insufficient evidence to support claims, or the claim was beyond the court’s jurisdiction. As a matter of fact, at first glance, the proportion of rulings favourable to plaintiffs (23.86%) is higher than defendants (10.23%), but given that a high percentage of suits (47.71%) have already been precluded from the outset, defendants actually enjoy a nearly three-to-one (57.96% to 23.86%) advantage over their opponents without counting suit withdrawal and settlement rate.

Chart 5: Disposition of Sample Cases by Courts 1996-2012 (N=88, %)



In conclusion, this article offers insight into why PIL is regarded as a rightful resistance in China. Under the authoritarian regime, PIL provides the public a risk-free channel to pursue their interests, resist against rights violations and make their voices heard. Although its effectiveness is limited in terms of winning case in the court, this citizen resistance in the form of PIL still plays an active role in encouraging people to take advantage of the law to defend their rights, demonstrating the strength of civil society and reshaping state-society relations during the social transition. In this sense, PIL symbolizes the people vs the Party (the title of an article in *The Economist* is “The Party v the people”, 2014).

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