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CHALLENGES AND PROBLEMS OF PUBLIC INTEREST LITIGATION

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Abstract

Public Interest Litigation means a legal action taken by the public spirited people for enforcement of public interest that affects the public or a particular class of persons. It offers a ladder to justice to the disadvantaged, indigent and voiceless classes of the society. Even though the term originated in the United States of America in 1980s, its evolution has been slow but sure and deliberate. The growth and evolution of PIL has been conditional on both legal and political factors, including the emergency and post- emergency times in India. This paper deals with the evolution of PIL in India along with its various facets which create a barrier between the needy public and the doors to justice. It also throws light on the profuse effort made by the judiciary in order to bring PIL to the position it has today. The authors finally lay down the problems and controversies arising in practical application of PIL and suggest on prevention of misuse of this empowering process.

Key words: Public interest litigation, judiciary, constitution, procedure.

I. Introduction

Public Interest Litigation (PIL) as it has developed in recent years marks a significant departure from traditional judicial proceedings. PIL was not a sudden phenomenon. It was an idea that was in the making for some time before its vigorous growth in the early eighties. It now dominates the public perception of the Supreme Court. The Court is now seen as an institution not only reaching out to provide relief to citizens but even venturing into formulating policy which the State must follow.

At the time of Independence, court procedure was drawn from the Anglo-Saxon system of jurisprudence.¹ The bulk of citizens were unaware of their legal rights, and much less in a position to assert them. The guarantees of fundamental rights and the assurances of directive principles, described as the 'conscience of the Constitution',² would have remained empty promises for the majority of illiterate and indigent citizens under adversarial proceedings. PIL has been a conscious attempt to transform the promise into reality.

II. Background

A number of disparate factors, legal and political, led to the development of PIL.

A. Judicial Review as Basic Structure

In the early years, the Supreme Court interpreted the role of the judiciary merely as determining the list before it in accordance with narrow procedural rules. In *A.K. Gopalan v State of Madras*,³ the Supreme Court remarked, In India the position of the judiciary is somewhere in between the Courts in England and the United States. But our Constitution, unlike the American Constitution, does not recognise the absolute supremacy of the Court over the legislative authority in all respects, for outside the restricted field of constitutional limitations our Parliament and the State Legislatures are supreme in their respective legislative fields and in that wider field there is no scope for the Court in India to play the role of the Supreme Court of the United States.

This perception changed by the time of *Golak Nath case*,⁴ where the Supreme Court declared that fundamental rights could not be derogated from even by an amendment to the Constitution. Six years later, in *Kesavananda Bharati's case*,⁵ while overruling *Golak Nath*, the Court evolved another far-

reaching doctrine under which Parliament was denied the power to amend the Constitution in a manner that violated its 'basic structure'. The Supreme Court also identified the power of judicial review as being part of such basic structure. Thus the legislature could not deny judicial review even by a constitutional amendment.

B. Introducing the Notion of 'Due Process'

The broadening of the contents of Fundamental Rights had to await the period following the Emergency of 1975-7. Initially the Court took a narrow view of the wording of Article 21⁶ to mean that as long as there was some statute made by the legislature taking away a person's liberty, it could not be challenged as being violative of fundamental rights.⁷ In a significant reversal, in *Maneka Gandhi v Union of India*,⁸ decided soon after the emergency, the Court asserted the doctrine of substantive due process as being integral to fundamental rights on the ground that it emanated from the scheme underlying Articles 14, 19 and 21. The Court's power to strike down legislation was now expanded to include a critical examination of a statute, even on the basis of the substantive element of due process.

C. The Emergency

The deferential role of the Supreme Court during the emergency⁹ contributed significantly to an opposite swing in the judiciary's view of its own role after the 1977 elections. The emergency witnessed large-scale violations of basic rights of life and liberty. These were facilitated by the enactment of a draconian statute, the Maintenance of Internal Security Act (MISA) and suspension of basic fundamental rights. An overwhelming number of high courts ensured that the state scrupulously followed the terms of the detention law. This obvious approach was however reversed by the Supreme Court in *A.D.M. Jabalpur v Shivkant Shukla*¹⁰ which granted virtual immunity to any action of the executive affecting the life and liberty of the citizen. The judgment can best be described, in the words of Professor C.K. Allen,¹¹ as the contribution of the Supreme Court to the emergency. The judgement brought into question the role of the Supreme Court as the guardian of citizens' liberties. The vigorous growth of PIL was in some measure a reaction to this criticism.

D. Executive Interference in Judicial Appointments

Another development during the post-Kesavananda phase was the increase in executive interference

with judicial appointments to the higher courts. The independence of the judiciary was seriously jeopardized when the executive of the day used the weapon of supersession twice in the appointment of the Chief Justice of India. The first was in 1973 when Justice A.N. Ray was appointed Chief Justice superseding Justices Shelat, Grover, and Hegde, each of whom had concurred with the majority view in *Kesavananda*. In 1976, Justice Khanna, who had dissented in *A.D.M. Jabalpur* was superseded and Justice Beg took over as the Chief Justice.

E. Reports on Legal Aid

In the meantime there were developments relating to legal aid to provide easier access to justice. In a report on legal aid in 1971, Justice Bhagwati¹² observed ‘even while retaining the adversary system, some changes maybe effected whereby the judge is given greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in administration of justice’.¹³

Similarly, the report of the Committee on Legal Aid presided by Justice Krishna Iyer¹⁴ in 1973 dealt with the nexus between law and poverty, and spoke of PIL in this context. It emphasized the need for an active and widespread legal aid system that enabled law to reach the people, rather than requiring people to reach the law.¹⁵

The two judges joined forces as a two-member committee on juridicare, which released its final report in August 1977. The report, while emphasizing the need for a new philosophy of legal services programme, cautioned that it ‘must be framed in the light of the socio-economic conditions prevailing in our country’.¹⁶ It further noted that ‘the traditional legal services programme which is essentially court or litigation oriented, cannot meet the specific needs and the peculiar problems of the poor in our country’.¹⁷ The report also included a draft legislation for legal services and referred to Social Action Litigation, a synonym for PIL. PIL was seen as a strategic arm of the legal aid movement intended to bring justice within the reach of those who, on account of their indigency, illiteracy, and lack of resources, were unable to reach the courts.

F. Post-Emergency Period

It is discernible that the strength of a judiciary is proportionate to the weakness of the executive. The

Janata Party which came to power in 1977 and subsisted till 1979, was a weak government at a point in time when the judiciary consciously began to develop PIL. How the Court viewed its transformation during this phase is enunciated in a decision given a decade later, where it said:

Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but also lays down a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realization of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.¹⁸

III. Facets of PIL

A. Access and Standing

In a developing country, the legal process tends to intimidate the litigant, who feels alienated from the system. A poor person who enters the legal stream, whether as a claimant, a witness or a party, may well find the experience traumatic.¹⁹ Lawyers have not done much to alleviate this. The way the Bar has developed gives issues of legal aid and legal awareness a low priority, thus ensuring that the lawyer is the only route of access to the legal system. The traditional rules of procedure in the adversarial system of law permit only a person whose rights are directly affected to approach the Court. Under the Common Law, a person claiming the writ of mandamus had to show that he was enforcing his own personal right.²⁰ In *Municipal Council, Ratlam v Shri Vardichan*²¹ the Court reacted to this approach and observed:

The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British-Indian vintage. If the centre of gravity of justice is to shift, as the preamble of our Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered.

Seervai refers to the development of the expanded concept of locus standi in the context of one of the earliest PIL cases. He notes:²² *The most striking illustration is furnished by the unreported judgement of Gandhi J, of the Bombay High Court, in a writ filed by a public spirited citizen – Mr. Piloo Mody. In Piloo Mody v Maharashtra, Gandhi J adopted the views of locus standi which was later laid down by Bhagwati J in the Judge's case. Piloo Mody complained that the Government – through three Ministers – had leased out valuable plots of land at a gross undervalue. Gandhi J rejected the respondents' contention that the petitioner had no locus standi. He upheld the petitioner's contention that the leases were granted mala fide at a gross undervalue. Having regard to the equities of the case, Gandhi J directed that if the lessees wanted to obtain the grant of lease they should pay 331/3% increased rent or return the land to government.*

The two originally separate rationales for a representative standing and citizen standing have now merged. The Supreme Court in the Judges' case,²³ said:

Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or legal burden is threatened and such person or determinate class of persons is by reasons of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

In such case the Court will allow any member of the public acting in a bona fide manner to espouse the cause of such person or class of persons.²⁴ Representative non-political, non-profit, and voluntary organisations who have a sufficient interest can maintain an action for judicial redress for public injury arising out of breach of public duty or violation of some provision of the Constitution. Lawyers,²⁵ medical practitioners,²⁶ and journalists²⁷ have brought such representative actions.

The Court has however been careful not to liberalize the concept of standing in criminal and service matters. In the Janata Dal case,²⁸ it held that the lawyer petitioner was concerned with the private

interest of the accused and therefore lacked locus standi to pursue the case as a public interest litigation. It observed:

Even if a million questions of law were to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.²⁹

In *Panchhi v State of UP*,³⁰ the Court refused permission even to the National Commission for Women to inter-vene in a case of a death sentence awarded to a woman. This, the Court said, was 'for the obvious reason that under the Code of Criminal Procedure, the National Commission for Women or any other organization cannot have locus standi in this murder case.'³¹ Similarly, in service matters the Court has held that a third party can-not challenge the appointment of a person.³² Although the Courts have permitted easier access in matters of PIL, they have been careful to note that PIL cannot be maintained by a meddle-some interloper or busybody,³³ wayfarers,³⁴ or officious intervenors having no public interest except for personal gain either for themselves or for the glare of publicity.³⁵

B. Relaxation of Procedural Requirements

In order to permit fuller access to Courts, PIL has been marked by a departure from procedural rules extending to the form and manner of filing a writ petition, appointment of commissions for carrying out investigation, and giving a report to Court, and the appointment of lawyers as amicus curiae to assist the Court.

The flexibility of PIL procedure can best be illustrated by what is termed as 'epistolary jurisdiction'. Taking a cue from the American Supreme Court's decision in *Gideon v Wainwright*,³⁶ where a postcard from a prisoner was treated as a petition, the Supreme Court said in the *Judges'* case,³⁷ that a public-spirited person could move the Court even by writing a letter. The Court has accepted letters³⁸ and telegrams³⁹ as petitions. The danger of such ease of access leading to the apprehension that a litigant could indulge in forum-shopping and address a particular judge was expressed by Pathak J, in the *Bandhua Mukti Morcha* case:

When the jurisdiction of the Court is invoked, it is the jurisdiction of the entire Court. ... No such communication can be properly addressed to a particular judge. ... Which judge or judges will hear the case is exclusively a matter concerning the internal regulation of the business of the Court, interference with which by a litigant or a member of the public constitutes the grossest impropriety.⁴⁰

Many of the early PILs, including *Sunil Batra (II) v Delhi Administration*,⁴¹ *Dr Upendra Baxi v State of UP*,⁴² *Veena Sethi v State of Bihar*,⁴³ and *People's Union for Democratic Rights v Union of India*⁴⁴ commenced with the petitioners sending letters to the Supreme Court. On 1 December 1988, the Supreme Court, on its administrative side, issued a notification on what matters could be entertained as PIL.⁴⁵ Under this notification, letter petitions falling under certain categories alone would be ordinarily entertained. These included matters concerning bonded labour, neglected children, petitions from prisoners, petitions against the police, petitions against atrocities on women, children, and scheduled castes and scheduled tribes. Petitions pertaining to environmental matters, adulteration of drugs and food, maintenance of heritage and culture, and other matters of public importance could also be entertained. The notification set out matters that ordinarily were not to be entertained as PIL, such as landlord – tenant disputes, service matters, and admission to medical and other educational institutions. The notification also laid down the procedure: the petition would be first screened in the PIL Cell and thereafter it would be placed before a judge to be nominated by the Hon'ble Chief Justice of India for directions.

C. Appointment of Commission(er)s

A difficulty often faced by a genuine PIL petitioner is lack of access to information even where he has a genuine grievance.⁴⁶ One method by which the Court gathers facts is by the appointment of commissioners. The Court has appointed district judges,⁴⁷ journalists,⁴⁸ lawyers,⁴⁹ mental health professionals,⁵⁰ bureaucrats,⁵¹ and expert bodies⁵² as commissioners. In environmental matters, the Court has relied upon expert bodies like the CPCB⁵³ and the NEERI⁵⁴ to study the situation and submit a report to the Court. While the power to appoint commissioners in matters of civil nature is found in Order XXVI Civil Procedure Code (CPC) and Order XLVI Supreme Court Rules, the powers under Article 32 read with Article 142 are wide enough to permit such a course of action in any matter before the Supreme Court. Commissions have also been appointed to propose remedial relief and monitor its implementation. The Court in *Indian Council for Enviro-Legal Action v Union of India*,⁵⁵

appointed NEERI as an expert body to study the situation of ground water soil pollution.

The Court has also drawn upon empirical data and expert studies to decide whether pavement dwellers' right to life and livelihood would be affected by their eviction.⁵⁶ Likewise, the Court relied upon the opinions of experts to dismiss a PIL challenging dairy imports from Ireland on the ground that they were radioactively contaminated by the leak from the Chernobyl nuclear plant.⁵⁷ However, in cases where there are rival contentions of expert bodies the Court will not intervene. Where the question concerned the seismic potential of the Tehri dam site, the Court stated that it did not have the expertise to give a final opinion on the matter.⁵⁸ The Court could only investigate and adjudicate if the government was not conscious of the inherent dangers.

The use of commissions has enabled the Court to check the facts alleged by the petitioner as well as the State after a proper scrutiny without affecting its role as an adjudicator. This has, however, had to be done with circumspection lest it appear that in its desire to redress the grievance, the Court is going beyond its powers.

D. PIL Petitioners and Amicus Curiae

A PIL petitioner is provided by the Court as one who draws its attention to a grievance requiring remedial measures and having no personal stake in the matter. It expects her/ him to be conscious of her/ his obligation to the cause being espoused and conduct herself/ himself accordingly. Thus persons bringing PILs to the Court cannot of their free will seek to withdraw the petition. The Court may take over the conduct of the matter if it feels that in the interests of justice that issue should be decided irrespective of the wishes of the petitioner. This is what happened in a case concerning children in jails brought to the Supreme Court by a letter petition from Sheela Barse, a journalist. Frustrated with the slow progress of the case, primarily due to the repeated adjournments sought and obtained by the state governments, she sought to withdraw the case. The Court, however, declined saying:⁵⁹

The third ground is that the proceedings are brought as a 'voluntary action' and that the applicant is entitled to sustain her right to be the 'petitioner in person' in a public interest litigation and that the proceedings cannot be proceeded with after delinking her from the proceedings. This again proceeds on certain fallacies as to the rights of a person who brings a public interest litigation. Any

recognition of any such vested right in the persons who initiate such proceedings is to introduce a new and potentially harmful element in the judicial administration of this form of public law remedy. That apart, what is implicit in the assertion of the applicant is the appropriation to herself of the right and wisdom to determine the course the proceedings are to or should take and its pattern. This cannot be recognised... the Court has ... already initiated an elaborate exercise... The petition cannot be permitted to be abandoned at this stage. Only a private litigant can abandon his claims.

PIL petitioners (who often appear in person) may be inarticulate in the presentation of the case or may so identify with the cause that they may not be able to maintain the necessary detachment. The Court may be better assisted by a lawyer who understands the legal dimensions of the issue and is objective in her/ his approach to the cause. The Courts have, in PIL cases, sought the assistance of lawyers as amicus curiae. In order to ensure that the process of the Court is not misused, the Court may require that the information supplied to it by the petitioner or the state be verified by the amicus curiae.⁶⁰ Senior advocates of the Supreme Court have assisted it as amicus curiae in several cases, including those relating to bonded labour,⁶¹ police excesses,⁶² forests,⁶³ and public accountability.⁶⁴ It is a moot point whether the appointment of an amicus curiae shuts out the petitioner from being heard by the Court and being made dependent on the amicus curiae for the effective presentation of her/ his point of view. None the less, the role of the amicus curiae has thus far been significant in the prosecution of PILs. Chief Justice J.S. Verma, speaking at a public function, eulogized the lawyer's role in PILs in these words: *It must be said to the credit of the Bar, and this I say from personal experience over the years, the most busy lawyers who charge large fees which I often openly criticize, if called upon to appear as amicus curiae in any such matter, leave every other work and without charging a single rupee put in their best effort in a PIL matter. That credit is due to the Bar. That is the beauty of the justice delivery system and that goes to show that the legal profession has not yet become wholly mercenary. Professionalism remains and professionalism is the essential trait of any such service-oriented enterprise.*⁶⁵

E. Non-adversarial

In the traditional adversarial system, the lawyers of each party are expected to present contending points of view to enable the judge to decide the issue for or against a party. In PIL there are no winners or losers and the mindset of both lawyers and judges can be different from that in ordinary litigation.

The Court, the parties and their lawyers are expected to participate in resolution of a given public problem. This was explained by the Court in *Dr Upendra Baxi v State of U.P.*⁶⁶

It must be remembered that this is not a litigation of an adversary character undertaken for the purpose of holding the State Government or its officers responsible for making reparation but it is a public interest litigation which involves a collaborative and cooperative effort on the part of the State Government and its officers, the lawyers appearing in the case and the Bench for the purpose of making human rights meaningful for the weaker sections of the community.

IV. PIL in Practice

The wide reach of PIL is best demonstrated by reference to some areas in which Courts have made particularly significant pronouncements. Although the Court has issued orders relating to a very wide range of PILs covering matters such as prisons and prisoners, the police, the armed forces, children, child labour, bonded labour, urban space, environment and resources, consumer issues, education, politics and elections, public policy and accountability, human rights and the judiciary, we confine ourselves to a detailed account of four broad areas as illustrative examples.⁶⁷

A. Human Rights

Judicial activism in the area of human rights has been facilitated in considerable measure by PIL. This is exemplified by the Court's active concern with the rights of detenus and undertrials, police excesses including arbitrary arrests, custodial violence and extra-judicial killings, conditions in prison and other custodial institutions like children's homes, women's homes, mental asylums, encounter killings in Punjab, and the rights of victims of crime.

In the early years of PIL, the Court focused on the rights of prisoners and the conditions of prisons. The Court acted upon postcards, letters, articles in newspapers, press reports, and petitions from a wide cross-section of citizens including lawyers and journalists to open the doors of the Courts to the millions of undertrials living in inhuman conditions in the country's prisons. First, the Court would convert the facts brought before it into a petition under Article 32. It would then issue directions to the state agency concerned to provide information, and if this was not forthcoming, it would appoint a

commissioner to elicit the facts. Once convinced that the matter required its intervention, the Court would issue a mandamus to state agencies to carry out its directives within a specified time-frame. This would include release of persons unlawfully detained, ensuring the closure of their cases if found to be pending for an unduly long time, and even directing that the detenus be compensated and rehabilitated. The Court also took the opportunity to give directions to state agencies to minimize further violations of human rights.

In the first PIL on prisoners' rights, *Hussainara Khatoon v State of Bihar (I to VI)*,⁶⁸ the attention of the court was drawn to the incredible situation of Bihar undertrials who had been detained pending trial for periods far in excess of the maximum sentence for the offences they were charged with. The Court not only proceeded to make the right to speedy trial the central issue of the case but passed an order of general release of undertrials who had undergone detention beyond such maximum period.

In a landmark judgement in *D.K. Basu v State of West Bengal*,⁶⁹ the Court acted upon a letter petition in August 1986 by the Chairman of the Legal Aid Services, West Bengal, which drew attention to the repeated instances of custodial deaths in West Bengal. In this case the Court laid down the procedure to be followed by the police on the arrest of a person. It said: *Police is, no doubt, under a legal duty and has a legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third degree methods or torture of the accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. ... No society can permit it.*⁷⁰

The Court further mandated that a relative of the arrested must be promptly notified and that police stations must prominently display the basic rights available to a detainee. The Court made it clear that failure to comply with this direction would be punishable as contempt of Court.

The early PILs had witnessed the award of compensation by the Court to victims of human rights violations.⁷¹ Later, in a custodial death case,⁷² the Court explained the jurisprudential basis for the award of compensation in writ jurisdiction as a remedy for constitutional tort. These principles were authoritatively reiterated in *D.K. Basu's* case where the Court declared that: *Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy*

*available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved.*⁷³

During the troubled years of militancy in the state of Punjab there were several instances of encounter killings, some of which came to be examined in the Supreme Court. In September 1991, it directed the investigation of the encounter killings in Pilibhit by the Central Bureau of Investigation.⁷⁴ The killing of lawyers practising in the Punjab and Haryana High Court during this period formed the subject matter of two PILs and resulted in the Supreme Court directing a CBI investigation and payment of compensation to the families of the victims.⁷⁵ In another PIL, on the basis of the CBI report which established that seventeen Punjab police personnel had been responsible for a custodial death, the Court awarded compensation of Rs.2 lakhs to the parents of a victim.⁷⁶

The concern of the Court has also extended to the victims of crime. In *Delhi Domestic Working Women's Forum v Union of India*,⁷⁷ the Court was concerned with the rape of innocent tribal girls by Army *jawans* in a moving train between Ranchi and Delhi and ordered an ex-gratia payment of Rs.10,000 to each of the victims. The Court recognised the trauma of the rape victims and set out the parameters for providing legal assistance to them at various stages.

B. The Judiciary

Under the scheme of the Constitution, issues concerning appointment and transfer of judges, their terms and conditions of service and their removal were initially thought to be predominantly within the domain of Parliament and the executive. In a series of PILs, the Supreme Court has, however, articulated a dominant role for the judiciary in this area. *S.P. Gupta v Union of India*⁷⁸ was a PIL by a senior advocate practising in Allahabad. It challenged the transfer of judges from one high court to another. The Supreme Court declared that the executive had the final say in the matter of appointment of judges to the high courts and the Supreme Court. More than a decade later, pursuant to a PIL filed by another lawyer, the correctness of this declaration was referred to a larger Bench.⁷⁹ The resultant decision in *Supreme Court Advocates-on-Record Association (SCAORA) v Union of India*⁸⁰ saw a larger Bench of the Supreme Court reverse the view in *S.P. Gupta* and declare that the word 'consultation' occurring in Article 124(3) of the Constitution should be read to mean 'concurrence',

thereby vesting the Chief Justice of India with the final say in the matter of appointments. The Court added that the power so vested in the judiciary would be exercised through a collegium consisting of the Chief Justice of India and his two most senior colleagues.⁸¹ There is considerable controversy about whether the Court has not amended the language of the Article by purporting to interpret it. In yet another PIL, again by an advocate, the Court explained its ruling in *SCAORA* and held that the decision to transfer a judge was not justiciable except on the ground of procedural impropriety in the consultation process, and then again only at the instance of the affected judge.⁸²

The events leading up to the unique impeachment motion for the removal of Justice V. Ramaswami of the Supreme Court witnessed a number of PILs. Pursuant to a notice given by⁸³ Members of Parliament, the Speaker of the Ninth Lok Sabha constituted a committee of three judges under the Judges (Inquiry) Act, 1968 to inquire into the allegations against the judge. With the dissolution of the Ninth Lok Sabha, the government did not constitute the committee on the ground that the motion for removal had lapsed. The Sub-Committee on Judicial Accountability, an association of lawyers, questioned this in a PIL. The Supreme Court held that the motion had not lapsed.⁸⁴ It clarified that the process of removal of a judge consisted of two stages. The stage of investigation and proof of misbehaviour was amenable to judicial review. It was the second stage, which began after the misbehaviour was proved, viz., the process of discussion and voting in Parliament, which was not amenable to judicial review.

Even while the inquiry was under way, two PILs were filed by advocates Raj Kanwar and Krishna Swami seeking to question the correctness of the judgement in *Sub-Committee on Judicial Accountability (supra)* and declaring the inquiry itself to be bad in law.⁸⁵ After the inquiry concluded and the report was submitted to Parliament, the wife of the judge, Sarojini Ramaswami, filed a petition asserting the right of the judge to be supplied with a copy of the report even before Parliament could debate the motion. The Constitution Bench disposed of the wife's petition,⁸⁶ declaring the law that the judge had to be given an opportunity at the stage of showing cause why a motion against him should not be accepted and supplied with a copy of the report.

However, by a separate judgement delivered on the same day, the two other PILs were dismissed⁸⁷ on the ground that the judge was not impleaded as a party. The Court reiterated its traditional

perception of standing, relying on the observation in *S.P. Gupta*, to the effect that ‘... if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such actor omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action...’.⁸⁸

A PIL filed by the All India Judges’ Association⁸⁹ provided the opportunity for the Supreme Court to give extensive directions to the state governments on various issues concerning the appointment and functioning of the subordinate judiciary. The Court’s directions have included prescribing the minimum qualifications for appointment at various levels of the subordinate judiciary,⁹⁰ provision of residential accommodation to every judicial officer, libraries, vehicles for travel, and suggesting the setting up of an All India Judicial Service.⁹¹

C. Environment

The area in which PIL’s contribution has been significant is environmental law. M.C. Mehta, as a petitioner in person, was a pioneer in bringing a larger number of issues to the Court concerning environmental and ecological degradation. These included the issues arising out of the leak of oleum gas from a factory in Delhi,⁹² pollution in Delhi,⁹³ the danger of the Taj Mahal from the Mathura refinery,⁹⁴ regulation of traffic in Delhi,⁹⁵ and the degradation of the Ridge area in Delhi.⁹⁶

The Court’s engagement with these matters has resulted in activating the statutory machinery established under various environmental laws. The Court’s activism in this area has, however, also attracted criticism. For instance, when the Court ordered the closure of industries, it neither heard all the industries affected nor their workmen before passing the order. This has resulted in these parties approaching of Court with a series of interlocutory applications, taking up an inordinate amount of the Court’s time, even while leaving the aggrieved parties dissatisfied.⁹⁷

The Court has also been involved in the protection of the fragile Coastal Regulation Zone⁹⁸ and regulating the growth of shrimp farms dotting the coastline.⁹⁹ The dangers of unchecked industrialization has compelled the Court to come down heavily on industry and develop the ‘polluter pays’ principle. This principle has been applied in the cases concerning shrimp farms,¹⁰⁰ tanneries,¹⁰¹

chemical industries in Rajasthan¹⁰² and Andhra Pradesh,¹⁰³ and distillery units in Tamil Nadu,¹⁰⁴ each of which were found discharging untreated effluents into water bodies or the soil. The Court has adopted the practice of keeping these cases on its board to effectively monitor compliance with its directions.¹⁰⁵ By such monitoring, the Court has ensured that a polluting unit is reopened only after it has satisfactorily installed pollution control devices. The Court has also insisted on reparations at the cost of the pollutant and restoration of the damaged environment.

The other principle the Court has evolved is the 'precautionary principle' which enjoins the State to anticipate the dangers of the use of hazardous technology. In *Vellore Citizens Welfare Forum v Union of India*,¹⁰⁶ the Court was dealing with the problem of pollution caused by over 900 tanneries operating in five districts of Tamil Nadu. The Court noticed that the leather industry was a major foreign exchange earner and Tamil Nadu's export of finished leather accounted for 80 per cent of the country's export of that commodity. Nevertheless, the Court pointed out that the leather industry 'has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be permitted to expand or even continue with the present production unless it tackles by itself the problem of pollution created by the said industry'.¹⁰⁷ The Court then drew on the concept of sustainable development, balancing ecology and development which had become part of customary international law. Among the essential features of sustainable development are the 'Precautionary Principle' and the 'Polluter Pays Principle'. The Precautionary Principle meant that the environmental measures taken by the state authorities 'must anticipate, prevent and attack the causes of environmental degradation'.¹⁰⁸ Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a person for postponing measures to prevent environmental degradation. The onus of proof was on the actor or industrialist to show that this action was environmentally sound. The Court pointed out that these principles had been accepted as part of the environmental law of the country.¹⁰⁹ The Court gave extensive directions, including a direction to the central government to constitute an authority under section 3(3) of the Environment (Protection) Act, 1986. Each polluting industry was asked to pay a 'Pollution Fine' of Rs.10,000, which was to be kept under a separate 'Environment Protection Fund', to be utilised to compensate the affected persons as identified by the authorities and also for restoration of the damaged environment. The units which were shut down by the Court would be permitted to reopen only after they had set up effluent treatment plants to the satisfaction of the Pollution Control Board after obtaining its consent. The Court further

directed that the matter be dealt with by the Madras High Court by a special Bench, to be known as *The Green Bench*.¹¹⁰

The Court undertook a similar exercise in relation to the pollution caused to the soil and ground water in a village in Jodhpur by five chemical industries which had been discharging untreated effluents into the soil.¹¹¹ The Court in this case resurrected the rule of strict liability earlier laid down in the *Oleum Gas Leak* case¹¹² and declared that once an activity was found to be hazardous, the person engaged in it was liable to make good the loss caused irrespective of whether or not he had taken reasonable care when engaged in it.¹¹³ The Court through a series of orders has also sought to ensure the supply of lead-free petrol through retail outlets in four major cities¹¹⁴ or deregistering old cars and compelling car manufacturers to switch over to higher internationally approved standards of manufacture.¹¹⁵

While the courts have enforced pollution standards and sometimes even improved on them in PILs, their orders have given rise to issues involving worker's rights. Whenever a polluting industry is shut down the people dependent on the industry, like the workmen and their families, are directly affected and are very often not heard before the closure is ordered. In Delhi alone, this has happened in the closure of the Idgah slaughterhouse,¹¹⁶ the relocation of polluting industrial units in Delhi,¹¹⁷ and removal of encroachments on the Ridge area of Delhi.¹¹⁸ Similarly, in seeking to strictly implement the Forest Act and the Wildlife Protection Act,¹¹⁹ the interest of the tribal population affected by such orders may not have been taken into account.

In this area, the Court may not so much be laying down new policy as prodding the government into implementing environmentally safe measures in order to curb pollution.

D. Public Accountability

Another area of abiding public concern which the Supreme Court has dealt with in PILs is good governance and the accountability of public officials. The trust reposed in persons holding public positions and exercising public power is belied when discretion is exercised irregularly and sometimes even for collateral considerations. These acts of misdemeanour get exposed through what have now been termed as 'scams'. The Supreme Court has played a major role in not only unearthing scams but

also carrying the discovery of such facts to their logical conclusion. The Court has ensured that persons exercising discretion in the distribution of public largess, whether it is petrol pumps or government accommodation, are accountable for their actions.

The problem of the discretionary quota vested in the minister concerned for allotment of petrol pumps and oil and gas dealerships first surfaced in a PIL filed by the Centre for Public Interest Litigation.¹²⁰ The Supreme Court requested the Attorney-General to submit draft guidelines and then set them down in its judgement as norms that would govern all future allotments of dealerships under the discretionary quota on compassionate grounds. The issue again surfaced in the Supreme Court in a PIL filed by Common Cause. Here the Court, on examining the records with the government, found many officials in the office of Captain Satish Sharma, the then Minister of State for Petroleum and Gas, or their relatives had been allotted petrol pump and gas agencies out of his discretionary quota. The Court found that all the 15 allotments have been made by the Minister in a stereotyped manner. The applications have not been officially received by the Petroleum Ministry.... The applicants seem to have approached the Minister directly... There is no indication in the allotment orders or anywhere in the record to show that the Minister kept any guidelines in view while making these allotments. ... the allotments of petrol pumps were made in an arbitrary and discriminatory manner.¹²¹

The Court quashed the fifteen allotments. After issuing a show cause notice to Satish Sharma and hearing him, the Court directed that he pay a sum of fifty lakh rupees as exemplary damages to the exchequer. Further, the police was asked to register a case and initiate prosecution against him for criminal breach of trust.

The aftermath of this decision must also be noticed. The cancellation of allotments by the Supreme Court has been followed by a series of cancellations of similar allotments by the Delhi High Court. However, two years later, the other directions were reviewed by a different Bench of three judges.¹²² The Court found that although the conduct of Captain Satish Sharma in making allotments of petrol outlets was 'atrocious'¹²³ and reflected 'a wanton exercise of power by the petitioner',¹²⁴ it fell short of 'misfeasance in public office' and therefore 'there was no occasion to award exemplary damages'.¹²⁵

In the matter of out-of-turn allotment of government accommodation, the Court, in a PIL by an advocate, found that Sheila Kaul while serving as a Union Minister of Urban Development had allotted two shops to her grand- sons, one to the maidservant of her son, one to the handloom manager of the firm owned by her son-in-law, another to a close friend, and one to the nephew of the minister of state in the same ministry. Likewise, using her discretionary power, she had allotted stalls to relatives and friends of her personal staff and officials of the Directorate of Estates. Here again, the Court quashed the allotments¹²⁶ and eventually directed her to pay a sum of sixty lakh rupees as exemplary damages to the government exchequer.¹²⁷

Another PIL was filed by a journalist, Vineet Narain and three others, including two advocates, seeking directions to the Central Bureau of Investigation (CBI) to investigate allegations of bribe given by the Jain brothers to several high-ranking politicians and bureaucrats in return for favours in the award of government contracts. The petition, filed in 1993, pointed out that although the CBI had gathered evidence in 1991, it was not proceeding with the case since the persons involved held high positions in public life. The seizure of the diaries from the Jain brothers had led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through *hawala* transactions. This in turn disclosed a nexus between politicians, bureaucrats, and criminals who were all recipients of money from unlawful sources given for unlawful consideration.

After satisfying itself that the matter merited examination, the Court gave a series of directions to ensure that the investigation by the CBI proceeded to its logical conclusion. The Court declared that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: 'Be you ever so high, the law is above you'. Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies.¹²⁸

The continuous monitoring of the case through a series of orders¹²⁹ resulted in thirty-four charge sheets being filed against fifty-four persons. Although the purpose of the proceedings come to an end

with the filing of these charge-sheets, the Court issued a detailed order concerning the constitution and control of the investigating agencies. The Court felt that 'no doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative'.¹³⁰ The Court examined the validity of a 'single directive' under which there had to be prior sanction of the designated authority in the government before the CBI could even commence any proceeding against higher-ranking officers of the government, public sector undertakings, and nationalised banks. The Court struck down the 'single directive' as interfering with the independent functioning of the CBI. The Court also issued directions under which the Central Vigilance Commission (CVC) would be given statutory status and would be responsible for the efficient functioning of the CBI. Similar directions were issued in respect of the Enforcement Directorate, the nodal prosecution agency.¹³¹

E. Issues and Controversies

The Law and Policy Divide: Where do we draw the line?

The framers of the Indian Constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy-making and implementation of policy are conventionally regarded as the exclusive domain of the executive and the legislature, with judiciary enforcing the law. The Supreme Court has itself recognised that 'the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another'.¹³² The power of judicial review cannot be used by the Court to 'usurp or abdicate the powers of other organs'.¹³³

In the development of our writ jurisdiction, derived from the English Common Law and the principles of judicial review, the Court is primarily concerned with the decision-making process and not the decision itself. The Court has reiterated that matters of policy would be a bar to the Court's interference. PIL in practice, however, tends to narrow the divide between the role of the various organs of government, and has invited controversy principally for this reason. The Court has sometimes even obliterated the distinction between law and policy. The approach of the Court in policy matters is to ask whether the implementation or non-implementation of the policy results in a

violation of fundamental rights. Where it does, the Court may interdict the violation, and issue orders accordingly. In *M.C. Mehta v Union of India*,¹³⁴ the Court explained how, despite the enactment of the Environment (Protection) Act, 1986, there had been a considerable decline in the quality of the environment. The Court noted that despite several PILs ‘the required attention does not appear to have been paid by the authorities concerned to take the steps necessary for the discharge of duty imposed on the State ... Any further delay in the performance of duty by the Central Government cannot, therefore, be permitted. Suitable directions by the Court to require performance of its duty by the Central Government are mandated by the law and have, therefore, now to be given’.¹³⁵ The Court, however, required the central government to indicate what steps it had taken thus far and also place before it the national policy, if any, drawn up for the protection of the environment.

In the matter relating to forests, in *T.N. Godavarman Tirumulkpad v Union of India*,¹³⁶ the Court constituted an expert committee to examine the issue of depletion of forest cover, and to consider questions such as who could be permitted to use forest produce and in what circumstances this was permissible. The Court imposed restrictions on the felling of trees and the sale of timber. In an exercise of ‘continuing mandamus’ it closely mentioned the implementation of its orders.¹³⁷

A writ petition in 1985 filed by M.C. Mehta related to proper management and control of vehicular traffic in Delhi. It was suddenly activated on 20 November 1997¹³⁸ by the Supreme Court after a large number of children died when a school bus plunged into the river Yamuna. The Court justified its directions to the government to prescribe speed limits and mandate the installation of speed control devices on the ground of executive inaction when it found that although the provisions of the Motor Vehicles Act, 1988 were adequate, they had not been exercised.

The law and policy divide was obliterated in *Vishaka v State of Rajasthan*,¹³⁹ which was a PIL concerning sexual harassment of women at the workplace. A significant feature of this decision was the Court’s readiness to step in where the legislature had not. The Court declared that till the legislature enacted a law consistent with the Convention on the Elimination of All Forms of Discrimination against Women, which India was obliged to do as a signatory, the guidelines set out by the Court in *Vishaka*, adopting the Convention, would be enforceable.

However, in *Delhi Science Forum v Union of India*,¹⁴⁰ where the Government of India's telecommunication policy was challenged by a PIL, the Court refused to interfere with the matter on the ground that it concerned a question of policy. Likewise, PILs that have sought prohibition of the sale of liquor,¹⁴¹ or for the recognition of a particular language as a national language,¹⁴² or for the introduction of a uniform civil code¹⁴³ have been rejected on the ground that these were matters of policy.

The Court may refuse to entertain a PIL if it finds that the issues raised are not within the judicial ambit or capacity. Thus, a petition seeking directions to the central government to preserve and protect the Gyanvapi Masjid and the Vishwanath temple at Varanasi as well as the Krishna temple and Idgah at Mathura was rejected. The Court said: 'the matter is eminently one for appropriate evaluation and action by the executive, and may not have an adjudicative disposition or judicially manageable standards as the pleadings now stand'.¹⁴⁴

In the *Tehri Bandh Virodh Sangarsh Samiti* case¹⁴⁵ the Court stated that it did not possess the requisite expertise to render any final opinion on the rival contentions of the experts. In our opinion the Court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam. We have already given facts in detail, which show that the Government has considered the question on several occasions in the light of the opinions expressed by the experts. The Government was satisfied with the report of the experts and only thereafter clearance has been given to the project.

Despite such observations, the Court has not adopted a uniform and consistent approach in dealing with its emerging role as a policy-maker. While in some cases, the Court has expressed its reluctance to step into the legislative field, in others it has laid down detailed guidelines and explicitly formulated policy. The former approach was taken by the Court when dealing with the question of ragging of students in medical colleges. The Court overturned the high court's direction to the state government to introduce anti-ragging legislation. The Supreme Court held:¹⁴⁶ The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging. ... It is entirely a matter for the executive particular branch of the Government to decide whether or not to introduce any particular legislation.

If the executive is not carrying out any duty laid upon it by the Constitution or the law, the Court can certainly require the executive to carry out such duty and this is precisely what the Court does when it entertains public interest litigation. ... But at the same time the Court cannot usurp the functions assigned to the executive and the legislative to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law making activities of the executive and the legislature.

This view notwithstanding, the more recent trend, however, is for the Court to assert its new role as policy-maker, as the direction in *Vishaka*¹⁴⁷ demonstrates, In the case of adoption of children by foreign nationals¹⁴⁸ and custodial torture,¹⁴⁹ similar guidelines were laid down. In a case dealing with vehicular pollution too, the Court stipulated the time-frame for enforcement of international pollution norms. In the *Hawala* case,¹⁵⁰ the Court concerned itself with establishing a mechanism for the supervision of the CBI and the grant of statutory status to the office of the Central Vigilance Commissioner.

Problems of Procedure

The flexibility of procedure that is a characteristic of PIL has given rise to another set of problems. The Court, which operates in an adversarial framework bound as it is by rules and by rules and by the pleadings of the parties concerned before it, requires delineation of issues in a legally manageable form. One method by which the Court has tackled this is to require the amicus curiae appointed by it to file, on the basis of a letter petition, a properly constituted writ petition.¹⁵¹ This gives an opportunity to opposite parties to ascertain the precise allegation and to respond to specific issues. The PIL relating to the depletion of forest cover is a case in point.¹⁵² The petition, as originally drafted and presented, pertained to the arbitrary felling of Khair trees in Jammu & Kashmir. The PIL has now been enlarged by the Court to encompass all forests throughout India. Individual states, therefore, will not be able to respond to the original pleadings as such, since it may not concern them at all.

The reports given by court-appointed commissioners raise problems regarding their evidentiary value. No court can found its decisions on facts unless they are proved according to law. This implies the right of an adversary to test them by cross-examination or at least counter affidavits. Generally, even the reports of judges given under the Commission of Inquiry Act, 1952 are not proof of their

contents.¹⁵³ Indeed, in at least one instance, the Court did not permit even counter affidavits to be filed in response to NEERI's report, making it difficult for individual parties affected to set out their own case.¹⁵⁴ In such instances the affected parties may have misgivings about the role of the Court, however well meaning, in championing a particular cause.

Some procedural questions about the epistolary jurisdiction are the subject matter of a pending PIL, *Sudip Majumdar v State of Madhya Pradesh*.¹⁵⁵ Even while these questions remain to be answered, the Court has been attentive to the issues they raise. In 1996-7, Chief Justice J.S. Verma constituted a committee prepare draft rules on PIL for general guidance and for maintenance of uniformity.¹⁵⁶ It is a basic postulate of the rule of law that the law must be certain and not become vulnerable to the predilections of individual judges, however well meaning. In the area of PIL, the differences in the perceptions of individual judges of the Supreme Court are clearly discernible. The opinion of Justice Pathak, as he then was, in *Bandhua Mukti Morcha*¹⁵⁷ underscored the importance of treating the Court as a single institution with one voice rather than an assemblage of individual judges.

The Resistance of Legislators

In the political arena too, the debate over the limits of judicial activism, particularly in the area of PIL, has been vigorous. The attempt by the judiciary through PILs to enter the area of policy-making and policy implementation has caused concern in political circles. A private member's bill, entitled 'Public Interest Litigation (Regulation) Bill, 1996', was tabled in the Rajya Sabha. The Statement of Objects and Reasons stated that while the objective of PIL, particularly those intended to benefit the poorer sections of society was laudable, it was being misused. Moreover, PIL cases were being given priority over other cases, which had remained pending in the courts for years. It was urged that if a PIL petition failed or was shown to be mala fide, the petitioner should be 'put behind bars and pay the damages'.¹⁵⁸ Although the Bill lapsed, the debate in Parliament revealed some of the criticism and suspicion that PIL had begun to attract.

The Problem of Unpredictability: Judicial introspection

The emergence of PIL over the last twenty years has been a salutary development towards providing the vast majority of citizens with access to justice and effective protection of their fundamental rights.

PIL has emerged as a powerful tool capable of fulfilling the promises that the Constitution held out. In the words of Chief Justice A.M. Ahmadi, PIL 'is a case of citizens finding new ways of expressing their concern for events occurring at the national level and exerting their involvement in the democratic process'.¹⁵⁹

However, the credibility of the PIL process is now adversely affected by the criticism that the judiciary is over-stepping the boundaries of its jurisdiction and that it is unable to supervise the effective implementation of its orders. It has also been increasingly felt that PIL is being misused by people agitating for private grievances in the garb of public interest and seeking publicity rather than espousing public causes.

The judiciary has itself recognised and articulated these concerns periodically. Many of the issues that have come up before the Court by way of PIL are highly technical, involving complex questions of policy-making, financial support for development projects, and industrial development. In addition to the perception of the judiciary as an institution that does not enjoy a democratic mandate, this criticism also focuses on the lack of expertise in the judiciary to deal with such complex and technical policy issues.

Judges have recognised that they have to act with circumspection. The concern was voiced by Pathak J (as he then was) as follows:¹⁶⁰ *Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the Legislature or to the executive Government ... In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one.*

The judge particularly emphasised the need for predictability in the following words:¹⁶¹ *There is great merit in the Court proceeding to decide an issue on the basis of strict legal principle and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the Court a*

direction which is certain, and unflinching, and that especial permanence in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed, both certainty of substance and certainty of direction are indispensable requirements in the development of law, and invest it with the credibility which commands public confidence in its legitimacy. This warning is of especial significance in these times, during a phase of judicial history when a few social action groups tend to show evidence of presuming that in every case the Court must bend and mould its decision to popular notions of which way a case should be decided.

The present Chief Justice, Dr A.S. Anand, has cautioned against what he termed 'judicial adventurism':¹⁶² *With a view to see that judicial activism does not become 'judicial adventurism' and lead a Judge going in pursuit of his own notions of justice and beauty, ignoring the limits of law, the bounds of his jurisdiction and the binding precedents, it is necessary and essential that 'public interest litigation' which is taken recourse to for reaching justice to those who are for a variety of reasons unable to approach the Court to protect their fundamental rights should develop on a consistent and firm path. The Courts must be careful to see that by their overzealousness they do not cause any uncertainty or confusion either through their observations during the hearing of a case or through their written verdicts. ... The Courts have the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation. All it means is that Judges are expected to be circumspect and self-disciplined in the discharge of their judicial functions.*

A further concern is that as the judiciary enters into the policy-making arena it will have to fashion a new remedies and mechanisms for ensuring effective compliance with its orders. A judicial system can suffer no greater lack of credibility than a perception that its order can be flouted with impunity. Justice S.P. Bharucha of the Supreme Court has expressed this concern as follows:¹⁶³ *This Court must refrain from passing orders that cannot be enforced, whatever the fundamental right may be and however good the cause. It serves no purpose to issue some high profile mandamus or declaration that can remain only on paper. It is counter productive to have people say, 'The Supreme Court has not been able to do anything' or worse. It is of cardinal importance to the confidence that people have in the Court that its orders are implicitly and promptly obeyed and it is, therefore, of cardinal importance that orders that are incapable of obedience and enforcement are not made.*

Responding to the general criticism that PIL is being misused, the Court has in several decisions expressed its concern and suggested a possible corrective mechanism. In *Sachidanand Pandey v State of West Bengal*,¹⁶⁴ Khalid J observed: *If courts do not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.*

Likewise, in *Raunaq International Ltd v. I.V.R. Construction Ltd*,¹⁶⁵ which incidentally was not a PIL, it was observed: *When a petition is filed as a public litigation ... the Court must satisfy itself that the party which has brought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. ... Even when a public interest litigation is entertained the Court must be careful to weigh conflicting public interest before intervening. Intervention by the Court may ultimately result in delay in the execution of the project.*

In a recent case,¹⁶⁶ the Court, while dismissing an ostensible PIL against the sale of a plot of land through public auction, held that the matter had not been raised in public interest at all, but to ventilate a private grievance. It observed:¹⁶⁷ *The directions and commands issued by the courts of law in a public interest litigation are for the betterment of the society at large and not or benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected it would be the bounden duty of the Court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated.*

V. Conclusion

While traditional lawyers have been critical about departure from the mould of adversarial litigation with its precise pleadings and procedure, and while politicians have been uneasy about judicial encroachment into the area of policy-making, the public by and large have welcomed the intercession of the Court through PIL. This is because of a general perception that the legislature is unwilling to take prompt remedial measures and the executive is unwilling even to enforce the existing law. Despite the problems of judicial predictability and the feeling that the constitutional balance may be

affected, it has to be acknowledged that the far-reaching judgments in cases like the Bhagalpur blindings,¹⁶⁸ the Bihar undertrial case,¹⁶⁹ and the mentally ill in jail¹⁷⁰ have provided desperately needed relief and exposed executive failings. PIL has also helped in the development of legal principles such as the ‘polluter pays’ principle,¹⁷¹ the ‘precautionary’ principle,¹⁷² and the principle of award of compensation for constitutional wrongs.¹⁷³

Bearing in mind the power and importance of PIL in making the Constitution a living reality for a large number of citizens, it is important to view these criticisms as indicators of the safeguards and checks that the Court must now build into its PIL jurisprudence. To allow public perception against PIL to fester would erode its credibility and that of the judiciary itself. In the words of Chief Justice J.S. Verma:¹⁷⁴

The need is to prevent misuse of PIL and not to criticise the process. And this is what the Courts will have to do so that misuse of PIL is prevented and proper use of it has not to be blunted. Every innovation takes time to get into proper shape. Any attempt to curb it would be to throw the baby with the bath water. It is primarily for the Courts who devised this procedure to practise self-restraint and to also devise proper checks and balances to ensure that even persons who want to misuse it are not able to do so.

In many ways PIL imposes a burden on as well as poses a temptation for the judge. On the one hand there is the desire to resolve the problems of a society where laws are not seen to be enforced, particularly where the petitioner before the Court is espousing a public and not a private cause. On the other hand, there is the temptation for a well-meaning judge to extend the law, if necessary, by a policy decision, departing ever so slightly from the trodden path. Thus, there is an interplay of enforcing the law, moulding it by equity while also responding to the perception of ‘an imperial judiciary’ making history. The future of PIL will depend much on where the Court strikes the balance between the law, and its sense of history.

Endnotes

¹ *Bandhu Mukti Morcha v Union of India* (1984) 3 SCC 161 at 188.

² Granville Austin, *The Indian Constitution: The Cornerstone of a Nation*, Oxford University Press, New Delhi, 1999, p. 50.

³ *A.K. Gopalan v State of Madras* (1950) SCR 88 at 286-7.

⁴ *Golak Nath v State of Punjab* (1967) 2 SCR 762.

⁵ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

⁶ ‘No person shall be deprived of his life or personal liberty except according to procedure established bylaw’.

⁷ In *A.K. Gopalan* Justice Das illustrated the point of procedural due process by citing the type of statute which could be passed by the English Parliament, namely that the Bishop of Rochester’s cook be boiled to death (*supra* n. 3 at 320).

⁸ *Maneka Gandhi v Union of India* (1978) 2 SCC 248.

⁹ Declared by the President under Article 352 of the Constitution on the advice of the Prime Minister Indira Gandhi and in force between 26 June 1975 and 21 March 1977 (see Basu’s *Commentary on the Constitution of India*, Vol. N., 1988, 198 and 202).

¹⁰ (1976) 2 SCC 521.

¹¹ C.K. Allen, *Law and Orders*, 3rd edn, 256, while commenting on *Liversidge v Anderson* 1942 AC 206.

¹² Then in the Gujarat High Court.

¹³ Reproduced in Jagga Kapur (ed.), *Supreme Court on Public Interest Litigation*, Vol. 1, SCALE, A-43 at A- 53.

¹⁴ Then in the Kerala High Court.

¹⁵ *Report of the Expert Committee on Legal Aid: Processual Justice to the People*, May 1973, 208-10. Thereafter Justice Krishna Iyer developed this theme in *Mumbai Kamgar Sabha v Abdulbhai* where he said: ‘Test litigation, representative actions, pro bono publico and like broadened form of legal proceedings are in keeping with the current accent on justice to the common man’. ((1976) 3 SCC 832 at 857).

¹⁶ *Report on National Judicare: Equal Justice-Social Justice*, August 1977, 128. Also see *People’s Union for Democratic Rights v Union of India* (1982) 3 SCC 235 at 240.

¹⁷ *Ibid.*

¹⁸ *M.C. Mehta v Union of India* (1987) 1 SCC 395 at 405.

¹⁹ This is brought out in the film *Aakrosh* by Govind Nihalani, in which the accused is too afraid to speak to even the well-meaning lawyer provided to him.

²⁰ *Charanjit Lal v Union of India* (1950) SCR 869; *D. Nagaraj v State of Karnataka* (1977) 2 SCC

148.

²¹ (1980) 4 SCC 162 at 163. Incidentally, this was a unique instance of section 166 of the Criminal Procedure Code, 1973 being invoked by public-spirited persons to seek redress against an apathetic municipality remiss in providing civic amenities.

²² H.M. Seervai, *Constitutional Law of India*, 4th edn, Vol. I, 1381-2, N.M. Tripathi, Bombay, 1991. One of the co-authors who appeared for the petitioner recalls that even though the first petitioner was an architect, a politician, and an MP, yet he had to make a bid for purchase of the land being offered for sale to be assured of his standing.

²³ *S.P. Gupta v Union of India* 1981 Supp. SCC 87 at 210. See also *People's Union for Democratic Rights Case*, *supra* n. 16; *Forward Construction Co. v Prabhat Mandal* (1986) 1 SCC 100.

²⁴ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161 at 186.

²⁵ *R.K. Garg v Union of India* (1981) 4 SCC 675.

²⁶ *Dr Shiva Rao Shantaram Ram Wagle v Union of India* (1988) 2 SCC 115.

²⁷ *Sheela Barse v Union of India* (1983) 2 SCC 96.

²⁸ *Janata Dal v H.S. Chowdhary* (1992) 4 SCC 305.

²⁹ *Janata Dal v H.S. Chowdhary* (1991) 3 SCC 756 at 768. This was followed in *Simranjit Singh Mann v Union of India* (1992) 4 SCC 653 and *Karamjit Singh v Union of India* (1992) 4 SCC 666.

³⁰ *Panchhi v State of U.P.* (1988) 1 SCC 177.

³¹ *Ibid.* at 180.

³² *R.K. Jain v Union of India* (1993) SCC 119.

³³ *Bandhua Mukti Morcha case*, *supra* n. 2 at 186.

³⁴ *Janata Dal case*, *supra* n. 28 at 349.

³⁵ In *Subhash Kumar v State of Bihar* (1991) 1 SCC 598 at 598-605, the Supreme Court observed that a person to satisfy a personal grudge or enmity could not invoke PIL. See also *Ramsharan Autyanuprashi v Union of India* (1989) Supp 1 SCC 251 and *Chhetriya Pardushan Mukti Sangharsh Samiti v State of UP* (1990) 4 SCC 449.

³⁶ (1963) 372 U.S. 335.

³⁷ *Supra* n. 23.

³⁸ As in *Ram Kumar Misra v State of Bihar* (1984) 2 SCC 451. This case related to minimum wages not being paid to labourers employed in two ferries.

³⁹ As in *Paramjit Kaur v State of Punjab* (1996) 7 SCC 20, where the CBI at the instance of the Supreme

Court unearthed the facts of the mass cremation of thousands of persons by the Punjab Police by labeling them 'unidentified'. The proceedings began with a telegram being sent to the residence of Kuldeep Singh J.

⁴⁰ *Supra* n. 1 at 229.

⁴¹ (1980) 3 SCC 488. This was a PIL concerning the rights of prisoners to humane treatment within prison walls.

⁴² (1983) 2 SCC 308. This was a PIL concerning the functioning of the Agra Protective Home, constituted under the Immoral Traffic (Prevention) Act, 1956, to shelter and rehabilitate women rescued from prostitution.

⁴³ (1982) 2 SCC 583. This concerned the plight of mentally ill locked away in the jails of Bihar.

⁴⁴ (1982) SCC 253. This concerned the payment of minimum wages to construction labour engaged in buildingstadia and flyovers for the Asian Games in Delhi in 1982.

⁴⁵ The full text of this notification is set out in Sangeeta Ahuja, *People, Law and Justice: Cases and Materials on PIL*, Orient Longman, Delhi, 1996, Vol. II, 860.

⁴⁶ A mention must be made of the Official Secrets Act 1923 under which it may not be possible for any member of the public to access information which the government regards as being a secret for various reasons. However, barring an exceptional situation where government may claim privilege, the Courts can always require the former to provide the necessary information either to it directly or to its Commissioners.

⁴⁷ A district judge was appointed in *Kamaladevi Chattopadhyay v State of Punjab* (1985) 1 SCC 41 to report on the women and children detained in Ludhiana jails.

⁴⁸ Krishan Mahajan of the *Indian Express* was appointed Commissioner along with Upendra Baxi, Law Professor in *Gulshan v Zila Parishad* (1987) Supp SCC 619.

⁴⁹ V.C. Mahajan and R.K. Jain were appointed Commissioners in *Gaurav Jain v Union of India* (1990) Supp SCC 709. R.K. Jain and Indira Jaising were appointed as Commissioners in *M.C. Mehta v State of Tamil Nadu* (child labour case) (1996) 6 SCC 756. Gopal Subramaniam was appointed Commissioner in *Sheela Barse v Union of India* 1994 (4) SCALE 493, to visit Assam and carry out the orders of the Court in regard to the release of the mentally ill held in the jails there.

⁵⁰ Dr Srinivasa Murthy, Professor of Psychiatry and Dr Amita Dhandha, Assistant Professor of Law were appointed Commissioners to visit jails in West Bengal and report on the mentally ill held there in *Sheela Barse v Union of India* (1993) 4 SCC 204 at 215.

⁵¹ Dr L. Misra Joint Secretary, Government of India, was appointed Commissioner in the *Bandhua Mukti Morcha* case, *supra* n. 1.

⁵² In *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96, the Director of Social Work, Nirmala Niketan, Bombay was appointed to investigate the ill-treatment of women prisoners. See also the committee appointed in *Rural Litigation and Entitlement Kendra v State of UP* (1985) 2 SCC 431.

⁵³ The Central Pollution Control Board. See *M.C. Mehta v Union of India* 1999 (4) SCALE 196.

⁵⁴ National Environmental Engineering Research Institute, Nagpur. See *S. Jagannath v Union of India* (1997) 2 SCC 87 and *In re Bhavani River-Shakti Sugars Ltd.* (1998) 6 SCC 335.

⁵⁵ (1996) 3 SCC 212. In the *Ram Kumar Misra* Case, *supra* n. 38, the Court directed the appropriate authority under the labour department of the government of Bihar to hear the workmen and the employees and find out whether minimum wages had been paid. The authority was further empowered to direct arrears to be paid if they were due.

⁵⁶ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

⁵⁷ *Supra* n. 26.

⁵⁸ *Tehri Bandh Virodhi Sangharsh Samiti v State of UP* (1992) Supp 1 SCC 44. The issue has been brought back to the Court in *N.D. Jayal v Union of India* 1999 (1) SCALE 463, and is pending.

⁵⁹ *Sheela Barse v Union of India* (1988) 4 SCC 226 at 246. See also *S.P. Anand v H.D. Deve Gowda* (1996) 6 SCC 734 at 744 where the Court observed: 'In PIL cases, the Petitioner is not entitled to withdraw his petition at his sweet will unless the Court sees reasons to permit withdrawal. In granting the permission the Court would be guided by considerations of public interest and would also ensure that it does not result in abuse of processes of the law'.

⁶⁰ See *State of West Bengal v Sampat Lal* (1985) 1 SCC 317. In the *Sheela Barse* case, where the Court disallowed the petitioner's prayer to withdraw the PIL, the Supreme Court Legal Aid Committee was asked to provide a lawyer to handle the petition thereafter.

⁶¹ A.K. Ganguly was the amicus curiae in *People's Union for Civil Liberties v State of Tamil Nadu* 1997 (7) SCALE SP-17.

⁶² Dr. A.M. Singhvi has been assisting the Court in *D.K. Basu v Union of India* (1997) 1 SCC 416.

⁶³ In *T.N. Godavarman Tirumulpad v Union of India* (1997) 2 SCC 267, the amicus curiae Harish Salve has been requested by the Court to screen all applications for intervention and it has further been directed that only he and the counsel for the Central and State Governments would be heard in the matter.

⁶⁴ Kapil Sibal assisted the Court in the cases concerning out-of-turn allotments of government accommodation: *Shiv Sagar Tiwari v Union of India* (1996) 6 SCC 599. Anil B. Divan performed a similar role in *Vineet Narain v Union of India* (1998) 1 SCC 226. F.S. Nariman was amicus curiae to the Court in *Vishaka v State of Rajasthan* (1997) 6 SCC 241. K.K. Venugopal assisted the Court in one aspect of the case concerning the Narmada Dam: *Narmada Bachao Andolan v Union of India* 1999 (5) SCALE 437; 1999 (6) SCALE 571.

⁶⁵ Justice J.S. Verma, “The Constitutional Obligation of the Judiciary”, R.C. Ghiya Memorial Lecture (1997) 7 SCC (Jrl.) 1 at 7.

⁶⁶ (1986) 4 SCC 106 at 117.

⁶⁷ For a detailed treatise on PIL cases in the High Courts and Supreme Court up to December, 1996 see Sangeeta Ahuja, *People Law and Justice*, supra n. 45. Also see Jagga Kapur (ed.), *Supreme Court on Public Interest Litigation*, supra n. 13.

⁶⁸ (1980) 1 SCC 81. *Kadra Pahadiya v State of Bihar* (1981) 3 SCC 671 was another case that dealt with the issue of speedy trial. The conditions of life convicts in Tihar jail attracted the Court’s concern in a petition sent to it by a prisoner. The Court introduced humaneness into the penitentiary system by requiring exceptional circumstances and adequate precautions for solitary confinement: *Sunil Batra v Delhi Admn.* (1980) 3 SCC

488. The horrific blinding of prisoners in Bhagalpur Jail in Bihar formed the subject matter of another PIL: *Anil Yadav v State of Bihar* (1981) 1 SCC 622; *Khatri (I) v State of Bihar* (1981) 1 SCC 623. In *Veena Sethi v State of Bihar* (1982) 2 SCC 583 the Court found that prisons were being used to house the mentally ill for thirty and forty years at a stretch. Corrective and preventive steps were put in motion. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v Union of India* (1994) 6 SCC 731 the Supreme Court gave directions regarding release on bail of undertrials facing charges under the Narcotic Drugs and Psychiatric Substances Act, 1985. The issue of handcuffing and fettering of undertrials was brought before the Supreme Court by journalist Kuldip Nayyar. The Court reiterated its earlier directions and declared that without the prior permission of the magistrate, the authorities would not force handcuffs or other fetters on a prisoner while lodged in a jail or in transit from one jail to another or to the Court: *Citizens for Democracy v State of Assam* (1995) 3 SCC 743.

⁶⁹ *Supra* n. 62.

⁷⁰ *Ibid.* at 439.

⁷¹ See *Sebastian M. Hongray v Union of India* (1984) 1 SCC 339 and *Bhim Singh v State of J&K*

(1985) 4 SCC 677.

⁷² *Nilabati Behera v State of Orissa* (1993) 2 SCC 746.

⁷³ *Supra* n. 62 at 439. The Court has been monitoring the implementation of the directions given by it in the case: see the orders in (1997) 6 SCC 642; (1998) 6 SCC 320; (1998) 7 SCC 507; 1999 (1) SCALE 465.

⁷⁴ *R.S. Sodhi v State of UP* (1994) Supp 1 SCC 143.

⁷⁵ *Punjab & Haryana High Court Bar Assn v State of Punjab* (1994) 1 SCC 616; *Navkiran Singh v State of Punjab* (1995) 4 SCC 591. The question of payment of compensation to claimants in the case of mass cremations by the Punjab police, *Paramjit Kaur, supra* n. 39 has, the Court directed, to be determined by the National Human Rights Commission.

⁷⁶ *Ranjeet Kumar v Secretary, Home, State of Punjab* 1996 (2) SCALE SP-51.

⁷⁷ 1994 (4) SCALE 608.

⁷⁸ *Supra* n. 23.

⁷⁹ *Subhash Sharma v Union of India* (1991) Supp 1 SCC 574.

⁸⁰ (1993) 4 SCC 441. The other issue in *SCAORA* was that by keeping unfilled a large number of vacancies in judges' posts the right to judicial review was being violated even while the independence of the judiciary was being challenged.

⁸¹ This has now been expanded to include the four next senior most judges after the Chief Justice. See *Re Special Reference No.1 of 1998* (1998) 7 SCC 739.

⁸² *Ashok Reddy v Government of India* (1994) 2 SCC 303.

⁸³ *Sub-Committee on Judicial Accountability v Union of India* (1991) 4 SCC 699.

⁸⁴ *Krishna Swami v Union of India* (1992) 4 SCC 605. Krishna Swami was also an MP.

⁸⁵ *Sarojini Ramaswami v Union of India* (1992) 4 SCC 506.

⁸⁶ *Krishna Swami v Union of India, supra* n. 84. The PILs challenging the defeat of the impeachment motion in Parliament, on account of abstention by the largest party, the Congress (I), were also dismissed: *Virendra Kumar v Shivraj Pail* (1993) 4 SCC 97 and *Lily Thomas v The Speaker* (1993) 4 SCC 234.

⁸⁷ *Supra* n. 23 at 219-20.

⁸⁸ *All India Judges Association v Union of India* (1992) 1 SCC 119 and (1993) 4 SCC 288.

⁸⁹ *All India Judges Association v Union of India* 1994 (4) SCALE 5; 1995 (2) SCALE 374; 1995 (6) SCALE

581.

⁹⁰ *All India Judges Association v Union of India* 1995 (5) SCALE 634. The Court continues to monitor the implementation of its directions of this PIL: see Order in 1999 (2) SCALE 663.

⁹¹ *M.C. Mehta v Union of India* (1987) 1 SCC 395.

⁹² *Ibid.* (1996) 4 SCC 750.

⁹³ *Ibid.* (1996) 4 SCC 351 and 750.

⁹⁴ *Ibid.* (1997) 8 SCC 770.

⁹⁵ 1996 (1) SCALE SP-22. Mehta, who is an Advocate, has brought to the Court the issue of child labour. See

M.C. Mehta v State of Tamil Nadu (1996) 6 SCC 756. Mehta also appears as counsel for PIL petitioners. See cases at *infra* n. 97 and 100.

⁹⁶ See the Orders in *M.C. Mehta v Union of India* (1997) 11 SCC 227, 312 and 327.

⁹⁷ *Indian Council for Enviro-Legal Action v Union of India* (1996) 5 SCC 281.

⁹⁸ *S. Jagannath v Union of India* (1997) 2 SCC 87.

⁹⁹ *Ibid.*

¹⁰⁰ *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCFC 647.

¹⁰¹ *Indian Council for Enviro-Legal Action v Union of India* (1996) 3 SCC 212.

¹⁰² *Ibid.* 1995 (6) SCALE 578.

¹⁰³ *In Re Bhavani River-Shakti Sugars Limited* (1998) 6 SCC 335.

¹⁰⁴ E.g. the PIL concerning vehicular pollution in Delhi has been listed for hearing on more than 50 occasions so far.

¹⁰⁵ *Supra* n. 100.

¹⁰⁶ *Ibid.* at 657.

¹⁰⁷ *Ibid.* at 658.

¹⁰⁸ *Ibid.* at 660.

¹⁰⁹ Similar directions were issued by the Court in relation to the pollution caused to the Nakkavagu river in Andhra Pradesh by 56 industries operating in the Patancheru Bolaram districts. The court directed a

compensation amount of Rs.1.39 crores to be paid initially by the state government which was then free to recover it from the industries. See *Indian Council for Enviro-Legal Action v Union of India* 1996 (5) SCALE

412. For a comprehensive and lucid restatement of the law on the subject, see: *AP Pollution Control Board v Prof. M.V. Nayudu* 1999 (1) SCALE 140. The Court in this case requested the National Environment Appellate Authority to enquire into the factual aspects of a complaint of water and air pollution caused by an industry in Andhra Pradesh.

¹¹⁰ *Indian Council for Enviro-Legal Action v Union of India*, *supra* n. 101.

¹¹¹ *M.C. Mehta v Union of India*, *supra* n. 18. Again the Court invoked the 'Polluter Pays' principle.

¹¹² See also: *Re Bhavani River-Sakthi Sugars Ltd.* (1998) 6 SCC 335. For orders on the closure of Shrimp farms, see *S. Jagannath v Union of India* 1996 (9) SCALE 167.

¹¹³ *M.C. Mehta v Union of India*, *supra* 1996 (2) SCALE SP-92; 1996 (4) SCALE SP-70.

¹¹⁴ *Ibid.* 1999 (3) SCALE 6, 166, 501. The Court set deadlines for car manufacturers to switch over to Euro I and II standards.

¹¹⁵ *Buffalo Traders Welfare Association v Maneka Gandhi* (1994) Supp 3 SCC 448. Here the court required a seven-member expert committee to address, among the other things, the adverse impact the closure would have on the thousands of workers who would be rendered unemployed.

¹¹⁶ See *supra* n. 96. For Order concerning the closure of polluting chemical factories in Bombay, see *F.B. Taraporewala v Bayer India Ltd.* (1996) 6 SCC 58.

¹¹⁷ *M.C. Mehta v Union of India*, *supra* n. 95.

¹¹⁸ *Pradeep Krishen v Union of India* (1996) 8 SCC 599 and *Animal & Environmental Legal Defence Fund v Union of India* (1997) 3 SCC 549.

¹¹⁹ *Centre for Public Interest Litigation v Union of India* (1995) Supp 3 SCC 382.

¹²⁰ *Common Cause v Union of India* (1996) 6 SCC 530 at 552, 553.

¹²¹ *Common Cause v Union of India* 1999 (4) SCALE 354 at 413.

¹²² *Ibid.* at 401.

¹²³ *Ibid.*

¹²⁴ *Ibid.* The direction by the Court for investigation by the CBI also could not be sustained since it was violative of Satish Sharma's right to life under Article 21. The Court said: 'He cannot be hounded out by the police or CBI merely to find out whether he has committed any offence or is living as a law abiding citizen. Even under Article 142 of the Constitution, such a direction cannot be issued' (at 412).

¹²⁵ *Shiv Sagar Tiwari v Union of India* (1996) 6 SCC 558.

¹²⁶ *Shiv Sagar Tiwari v Union of India* (1996) 6 SCC 599. When Court in the same case directed eviction of out-of-turn allottees of accommodation in Type IV quarters, 1996 (9) SCALE 680, the

government promptly reversed the judgement by issuing an Ordinance regularizing all the out-of-turn allotments.

¹²⁷ *Vineet Narain v Union of India* (1996) 2 SCC 199 at 200-1.

¹²⁸ 1996 (2) SCALE SP-84; 1996 (3) SCALE SP-12; 15; 1996 (4) SCALE SP-3, 21, 56; 1996 (5) SCALE SP-24

and 1996 (6) SCALE SP-24. Likewise, the Court also monitored the investigations into the 3 criminal cases involving the former Prime Minister, P.V. Narasimha Rao: See *Anukul Chandra Pradhan v Union of India* 1996 (3) SCALE SP-27, 35; 1996 (4) SCALE SP-13, 71; 1996 (6) SCALE SP-23 and (1996) 6 SCC 354.

¹²⁹ *Vineet Narain v Union of India* (1998) 1 SCC 226 at 243.

¹³⁰ Although the CVC has, by an Ordinance, been granted statutory status, the government is yet to implement the judgement in its totality. Further, it should be noted here that many of the persons charge-sheeted as a result of CBI's inquiry in the *Hawala* case have been discharged principally on account of a judgement by another Bench holding that the diaries seized did not constitute admissible evidence: see *Central Bureau of Investigation v V.C. Shukla* (1998) 3 SC 410. Also see the orders of the Supreme Court in PILs concerning the investigation into the Bihar Fodder Scam: *State of Bihar v Ranchi Zila Samata Party* (1996) 3 SCC 683; *Union of India v Sushil Kumar Modi* (1996) 6 SCC 500. The Supreme Court has overseen the investigation into the scam arising out of allotment of LPG dealerships through a private company and has taken matters to a logical conclusion, including the registration of criminal cases: See *Jagriti Upbhokta Parishad Samitiv State of UP* (1998) 5 SCC 640 and (1998) 9 SCC 68.

¹³¹ *Ram Jawaya Kapur v State of Punjab* (1955) 2 SCR 225 at 235-6.

¹³² *Fertilizer Corporation Kamgar Union v Union of India* (1981) 1 SCC 568 at 584.

¹³³ (1998) 9 SCC 589.

¹³⁴ *Ibid.* at 590.

¹³⁵ (1997) 3 SCC 312.

¹³⁶ For an explanation of the concept of 'continuing mandamus' see *Vineet Narain's case supra n.* 129 and 237.

¹³⁷ *M.C. Mehta v Union of India* (1997) 8 SCC 770.

¹³⁸ (1997) 6 SCC 241.

¹³⁹ (1996) 2 SCC 405.

¹⁴⁰ *Krishna Bhat v Union of India* (1990) 3 SCC 65.

¹⁴¹ *Kanhya Lal Sethia v Union of India* (1997) 6 SCC 573. But see *Santosh Kumar v Secretary, Ministry of Human Resources Development* (1994) 6 SCC 579, where the Supreme Court, in a PIL, issued a mandamus to the government for an amendment of the syllabus for secondary schools to include Sanskrit as an elective subject.

¹⁴² *Ahmedabad Women's Action Group v Union of India* (1997) 3 SCC 573. See also *Maharishi Avdesh v Union of India* (1994) Supp 1 SCC 713 to the same effect. However, a voluntary organisation providing succour to women in distress was successful in persuading the Supreme Court to hold in a PIL that a Hindu husband married under Hindu law cannot by converting to Islam solemnize a second marriage. Although in this case the Court directed the central government to file an affidavit to indicate the steps it has taken to enact a uniform civil code, it later clarified that this direction was not mandatory: *Sarla Mudgal v Union of India* (1995) 3 SCC 635.

¹⁴³ *Mohd. Aslam v Union of India* (1994) 2 SCC 48.

¹⁴⁴ *Supra* n. 58. See also *Sachidanand Pandey v State of West Bengal* (1987) 2 SCC 295 at 331.

¹⁴⁵ *State of H.P. v A Parent of a Student of Medical College* (1985) 3 SCC 169 at 174 – 5. In this case a parent of a student addressed a letter to the Chief Justice of the High Court complaining about ragging of freshers by senior students of the college.

¹⁴⁶ *Supra* n. 138.

¹⁴⁷ *Lakshmi Kant Pandey v Union of India* (1985) Supp SCC 701.

¹⁴⁸ *D.K. Basu's case, supra* n. 62.

¹⁴⁹ *Supra* n. 114.

¹⁵⁰ *Vineet Narain's case, supra* n. 129.

¹⁵¹ This happened in *Baljit Malik v Delhi Golf Club* (1998) 4 SCC 624, where one of the co-authors who assisted the Court as amicus curiae drew up a petition on the basis of the letter sent by the petitioner.

¹⁵² *T.N. Godavarman Tirumulkpad's case, supra* n. 63. Another example of this is the writ petition of Common Cause raising the issue of the appointment of ombudsmen – Lokpals and Lokayukts – which provided the Court with an opportunity to deal with a specific instance of abuse of discretionary powers in relation to allotment of petrol pumps by a minister. The petition itself contained no pleadings to this effect. The Court's action proceeded entirely on the basis of a newspaper clipping: *Common Cause v Union of India, supra* n. 120.

¹⁵³ *Kehar Singh v State* (1988) 3 SCC 609.

¹⁵⁴ *S. Jagannath v Union of India, supra* n. 98. See also the grievance of workmen and their families in cases cited at *supra* n. 96 and 115.

¹⁵⁵ (1983) 2 SCC 258. The ten question include the following:

1. Should this Court take notice of such letters addressed by individuals by post enclosing some paper cuttings and take action on them *suo moto* except where the complaint refers to deprivation of liberty of any individual?
2. Can this Court take action on letters addressed to it where the facts disclosed are not sufficient to take action? Should these letters be treated differently from other regular petitions filed in this Court in this regard and should the magistrate or the District Judge be asked to enquire and make a report to this Court to ascertain whether there is any case for further action?
3. Would such informality not lead to greater identification of the Court with the cause than would be when a case involving the same type of cause is filed in the normal way?

¹⁵⁶ Justice J.S. Verma, 'The Constitutional Obligation of the Judiciary', R.S. Ghiya Memorial Lecture (1997) 7 SCC (Journal) 1 at 7. The proposed amendments to the Supreme Court Rules include the addition of an entire chapter (Order XLIV) regarding PIL.

¹⁵⁷ See *supra* n. 1.

¹⁵⁸ The full text of the Bill introduced by Suresh Pachouri can be found in Jagga Kapur (ed.), *Supreme Court on Public Interest Litigation*, Vol. I, A-145.

¹⁵⁹ Justice A.M. Ahmadi, Dr Zakir Hussain Memorial Lecture, (1996) 2 SCC (Journal) 1 at 11.

¹⁶⁰ *Bandhua Mukti Morcha* case, *supra* n. 1 at 232.

¹⁶¹ *Ibid.* at 234.

¹⁶² Justice A.S. Anand, 'Protection of Human Rights – Judicial Obligation or Judicial Activism', Krishan Rao Memorial Lecture, (1997) 7 SCC (Journal) 11 at 23.

¹⁶³ Justice S.P. Bharucha, 'Inaugural Lecture of Supreme Court Bar Association's Golden Jubilee lecture series', reproduced in Jagga Kapur (ed.), *Supreme Court on Public Interest Litigation*, Vol. IV, VI at VIII.

¹⁶⁴ (1987) 2 SCC 295 at 334. See also *Chhetriya Pardushan Mukti Sangarsh Samiti and Ramsharan Autyanuprasi*, *supra* n. 35.

¹⁶⁵ (1999) 1 SCC 492 at 501.

¹⁶⁶ *Malik Brothers v Narendra Dadhich* 1999 (5) SCALE 212.

¹⁶⁷ Ibid. at 213.

¹⁶⁸ See *Khatri*, *supra* n. 68.

¹⁶⁹ See *Hussainara Khatoon*, *supra* n. 68.

¹⁷⁰ *Sheela Barse v Union of India*, *supra* n. 50.

¹⁷¹ See section on ‘Environment’ *supra*.

¹⁷² Ibid.

¹⁷³ See section on ‘Human Rights’, *supra*.

¹⁷⁴ Justice J.S. Verma: ‘The Constitutional Obligation of the Judiciary’, R.C. Ghiya Memorial Lecture, (1997)7 SCC (Journal) 1 at 7.

