



International Environmental  
Law Research Centre

# India: Public Interest Litigation Survey 1997 - 1998

published in

*33-34 Annual Survey of Indian Law 525 (1997-98)*

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## I. INTRODUCTION

THE MARKED increase in the number of reported decisions in public interest litigation (PIL) cases, both in the high courts as well in the Supreme Court, is testimony to the ever expanding jurisdiction of the court in this branch of the law. While issues that have been dealt with in the past continued to engage the courts, new ones appeared too.

The issue of public accountability continued to engage the courts' attention. 'Continuing mandamus' was forged by the court in monitoring the progress of criminal investigations. There was also a marked departure from the past where the court would conclude a case hoping that the government would pick up the thread thereafter. The PILs in the years under review witnessed a 'law making' and 'policy delineating' court.

Certain issues feature for the first time in this review. The section on projects was felt necessary for two reasons. One was to examine the justification for the criticism that judicial activism through PIL was hampering development. The other was to understand the judiciary's response to economic liberalisation. The issues concerning women are being dealt with in detail elsewhere in this survey.\*\* Nevertheless, the frequency with which they, and certain others like ancient monuments and town planning, figured in the court's PIL docket necessitated separate treatment.

As in the earlier years, environmental issues dominated the PIL discourse. The Supreme Court appropriated the debate on the dwindling forest cover by mandating that no other court should take up the issue. Law making was at its best with the Supreme Court unable to brook any delay in finding solutions to the problems of insulating the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC) from executive interference, the phasing out of old vehicles from Delhi's roads, or in dealing with sexual harassment of women at the workplace. Earlier when the court struck down legislation or a constitutional amendment, it would leave it to the legislature to take corrective action. The court broke new ground when it created a whole tier of adjudication at the level of the high court by mandating that all decisions of administrative tribunals would be judicially reviewed in the High Court before they could be further challenged in the Supreme Court.

The growth of PIL has meant that the debate over its efficacy has continued to grow as well. The response of legislators, perhaps not fully informed, has come too late, has been more in aggressive self-defense and, often, reductionist. The internal corrective mechanism, to which this review adverts, is the only check yet on judicial excesses. In the end, individual judges decided when the court would act, and when it would not, in public interest.

## II PRACTICE AND PROCEDURE

### A. Locus

Before entertaining a PIL, the court can ask the petitioners to disclose in an affidavit their concern and purpose for filing the case. The court will thereafter decide whether it should take up the cause at the instance of those petitioners or appoint an amicus curiae to assist it. This was done by the Supreme Court when a PIL was filed by two petitioners alleging large scale corruption in the functioning of the Garhwal Water Institute constituted to provide potable drinking water to the hilly towns and villages of the Garhwal region in Uttar Pradesh.<sup>1</sup> The court has also stressed that organisations that do not disclose any material regarding their nature and function should not be allowed to undertake litigation in the name of public interest particularly since it could cause a lot of damage to others.<sup>2</sup>

Increasingly courts have been insisting that the complaint be made by the affected parties themselves. Thus a PIL questioning the collection of capitation fees in colleges by an academician and not by the affected students was not entertained.<sup>3</sup> For the same reason PILs by non-governmental organisations (NGOs) or individuals, and not by the landowners, challenging the acquisition of land for an irrigation project,<sup>4</sup> or construction of a games village<sup>5</sup> or for construction of electric transmission lines<sup>6</sup> were rejected.

A PIL filed by a busybody for someone else and by concealing material facts can invite the high court's displeasure. To add to Sanjay Musale's woes, when he appealed the high court's order dismissing his petition, the Supreme Court, agreeing with the high court, further saddled him with costs of Rs.5,000.<sup>7</sup>

## **B. Maintainability**

A PIL by S. Jagannath in 1994 resulted in the Supreme Court, in a significant judgment on 11.12.1996 ordering the closure of several aqua farms dotting the Indian coastline.<sup>8</sup> After the closure orders were made, several writ petitions were filed in the Supreme Court by some of the aqua farms facing closure on the ground that they were not parties to the earlier proceedings and were accordingly not bound by the judgment in Jagannath. The notification of the Central Government in 1991 under the Environment (Protection) Act, 1986 was sought to be challenged as being violative of the petitioners' fundamental right to carry on their trade. It was also contended that the aqua farms were not industries and that the judgment in Jagannath was thus based on an erroneous premise. Repelling this renewed challenge, the Supreme Court in *Gopi Aqua Farms v. Union of India*<sup>9</sup> pointed out that the earlier proceedings in Jagannath had received wide publicity and it was difficult to believe that the present petitioners were unaware of those proceedings. There was no explanation as to why the 1991 notification could not be challenged in the earlier proceedings and on this ground also the writ petitions were not maintainable. The issue whether an aqua farm was an industry would be gone into in the review petitions which were pending.

## **C. Misuse of jurisdiction**

A PIL based on allegations made against the top brass in the government in a petition by Rear Admiral Vishnu Bhagwat five years after he withdrew it was seen as a misuse of the court's jurisdiction.<sup>10</sup> Levelling charges of corruption against a minister purely on the basis of newspaper reports and not making any personal enquiries before filing a PIL will also invite outright dismissal as it would be a "waste of court's time".<sup>11</sup> An attempt to give a private dispute the colour of public interest would also meet the same fate.<sup>12</sup> The court will also not permit a PIL at the instance of a party who wants to derive a benefit for itself.<sup>13</sup> Politicians, with a genuine cause, are not debarred from participating in PILs as petitioners<sup>14</sup> or respondents.<sup>15</sup>

Among petitions that will not be entertained is one that asks the court to examine in the abstract the validity of an enactment.<sup>16</sup> Coming to the court belatedly would also entail dismissal of the PIL.<sup>17</sup>

## **D. Issues non-justiciable**

Courts are reluctant to get into questions concerning legislative or executive policy. Some of these include banning single digit lotteries,<sup>18</sup> shifting of a slaughter house<sup>19</sup> and scheduling the hours of load shedding to facilitate unhindered viewing of a cricket match telecast.<sup>20</sup> So also where it involves political questions affecting the legislature or the executive. Thus, the high courts have declined to examine the legality of the dissolution of the Lok Sabha,<sup>21</sup> or of the transfer of the Government of Bihar,<sup>22</sup> the failure to introduce the Women's Reservation Bill<sup>23</sup> or the failure to hold elections in Pakistan Occupied Kashmir.<sup>24</sup>

The Supreme Court was perhaps indulgent, when petitioned by a lawyer, to re-examine the question of the validity of Deve Gowda becoming the Prime Minister without first being elected to either house of Parliament. The court followed its earlier decision, at the instance of S.P. Anand,<sup>25</sup> and negated the challenge.<sup>26</sup> The additional ground of challenge, that by not resigning his membership of the state legislative assembly at the time he was sworn in as Prime Minister, Deve Gowda's "willingness and desire of becoming a Member of Parliament comes under a cloud" was only stated to be rejected. However, it refused to entertain a PIL questioning the appointment of Smt. Rabri Devi as Chief Minister of Bihar.<sup>27</sup>

A petition by a retired Director General of Police relating to the quality of security to be provided to certain protected persons was rejected since these were matters to be decided by a committee of experts and not "which admit of a judicial determination" and were accordingly not justiciable.<sup>28</sup>

Where the high court is already seized of an issue, the Supreme Court will not entertain a PIL on the same issue under article 32. This was the reason for the Supreme Court declining to examine a petition concerning the move of the Maharashtra government to wind up the Justice Srikrishna Commission of Inquiry constituted by it to investigate the communal riots in Bombay in January, 1993 in the wake of the demolition of the Babri Masjid.<sup>29</sup> The other relief of compensation for victims of the riots was also declined by the court since "no foundation is laid in the pleadings nor any finding in support thereof by any commission identifying the victims nor even evidence placed on record in that behalf. Paper reports... is not evidence".<sup>30</sup>

## **E. Internal corrective mechanisms**

Then there are corrective mechanisms as part of the hierarchical system of the functioning of courts that keep the transgressions of the limits of jurisdiction under check. Larger benches of the high courts have invariably curbed the overenthusiasm of single judges. Thus, the division bench of the Kerala High Court stayed the operation of the order of a single judge of that court setting up and inviting "generous contributions to the Mosquito Control Programme of the High Court of Kerala" to fight the mosquito menace in the city of Kochi.<sup>31</sup> The same court had to reverse another single judge who quashed a government notification granting Ramzan holidays for Muslim majority schools.<sup>32</sup> A division bench of the Gujarat High Court had to interfere when in a PIL pending before it, a single judge suo motu ordered a CBI investigation into the same issue.<sup>33</sup>

A single judge of the Rajasthan High Court called for the records of a disposed PIL, while hearing a wholly unconnected criminal revision petition, and made all manner of allegations against the previous and present chief justices and judges of that high court and directed notice of contempt to issue to the Chief Justice. This, when taken in appeal, caused the Supreme Court to say: "We wish we did not have to deal with a case like this but we shall be singularly failing in our duties to the institution if we do not deal with the matter and take it to its logical conclusion."<sup>34</sup> It found that the observations of Sethna J., of the high court that the former chief justices of the high court, which included the incumbent Chief Justice of India, J.S. Verma had illegally drawn their full daily allowance to which they were not entitled for their stay at Jaipur, were "not only based on wrong assumptions but are also legally unsound and untenable".<sup>35</sup> It concluded, "the disparaging and derogatory comments made in most intemperate language in the order under appeal do no credit to the high office of a High Court Judge."<sup>36</sup>

Suo motu powers were exercised by a single judge of the Karnataka High Court who after chancing upon two press reports in a local newspaper, passed an order castigating the drivers and conductors of the Bangalore Transport Corporation. He then directed the Registrar General of the high court to register his order as a writ petition and place the matter before the Chief Justice for allocation of a court to hear it. A division bench, which included the Chief Justice, while reversing the order noted that "while exercising the suo motu power of initiating PIL, self-restraint and judicious exercise is expected to be borne in mind". It directed that such matters be brought to the notice of the Chief Justice for initiation of action.<sup>37</sup> However, there does not appear to be any such procedural requirement in regard to the suo motu powers exercised by judges of the Supreme Court. Two of them sitting during the summer recess as a 'vacation bench' took cognizance of a press report relating to

the power crisis faced by the country's premier medical institution, the All India Institute of Medical Sciences (AIIMS) in New Delhi.<sup>38</sup>

### III. JUDICIARY AND LAWYERS

It is in the PIL jurisdiction that the judiciary gets to deal with its own concerns. These include service conditions of the subordinate judiciary, the infrastructural requirements of courts and lawyers, providing an effective system of legal aid and importantly redefining the inter se hierarchical control over courts and tribunals.

#### A. Administrative tribunals

The powers and jurisdiction of the administrative tribunals, constituted under articles 323-A and 323-B of the Constitution were examined at great length in a PIL in 1985 in which the vires of the Administrative Tribunals Act, 1985 ('Act') was in question.<sup>39</sup> The constitution bench expounded the theory of alternative institutional mechanisms and after the changes suggested by it to the Act were carried out, upheld its validity. Thus, the divesting of jurisdiction in relation to service matters from the High Court and vesting it in tribunals constituted under the Act received the approval of the Supreme Court.

Of the several reasons that prompted a larger bench of seven judges to re-examine the issue more than a decade later in another PIL, *L. Chandra Kumar v. Union of India*,<sup>40</sup> the foremost was that since their inception the tribunals constituted under articles 323-A and 323-B had not performed up to the expectations and this was a "self-evident and widely acknowledged truth".<sup>41</sup> Secondly, the constitutional validity of clause 2(d) of article 323-A and clause 3(d) of Article 323-B, which was not gone into in *Sampath Kumar*, needed examination particularly in view of the settled position that the jurisdiction of the high courts under articles 226 and 227 and of the Supreme Court under article 32 was part of the inviolable basic structure of the Constitution. Thirdly, although the reasons for which they were constituted, viz., easing the heavy workload of the high courts, persisted, the standards of the tribunals had to be elevated in order to ensure that they stood constitutional scrutiny in the discharge of the power of judicial review conferred on them.

The court, after revisiting the entire gamut of earlier decisions,<sup>42</sup> declared the power of judicial review over legislative action vested in the high courts and the Supreme Court as well as the power of the high courts to exercise judicial superintendence over the decisions of all courts and tribunals to be an integral and essential feature of the Constitution. To the extent they excluded the jurisdiction of the high courts and the Supreme Court, clause 2(d) of article 323-A and clause 3(d) of article 323-B were struck down.<sup>43</sup> The tribunals would have the power to examine the validity of legislations including subordinate legislation and rules but not of the very Act under which they were created. In an instance of judicial innovation, even perhaps law making, the Supreme Court directed that from the date of its judgment, i.e., 18.3.1997, the correctness of all decisions of the tribunals would first be examined by a division bench of the high court and only thereafter by the Supreme Court under article 136. Upholding the tribunal's power under section 5 (6) of the Act to examine the constitutional validity of a provision, the court directed that such cases would be heard by a bench of at least two members, one of whom would be a judicial member.

In the overall context of increasing judicial powers and jurisdiction through PIL, the decision in *Chandra Kumar* forcefully asserts the supremacy of the judiciary over the other organs of the state. It is one more example of the court rearranging its hierarchical matters vis-à-vis subordinate courts and tribunals thus rendering any executive or legislative intervention in the area dispensable and irrelevant.

That the Supreme Court chose a PIL to display judicial activism of great significance is not a coincidence. But that power is certainly not available to the tribunals. In *Dr. Duryodhan Sahu v. Jitendra Kumar Mishra*<sup>44</sup> the Supreme Court reversed a decision of the Orissa Administrative Tribunal rendered in a matter brought before it in the public interest. The court explained that only a person aggrieved by any order pertaining to any matter within the jurisdiction of the tribunal could apply to it. The court mused: "If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated".<sup>45</sup>

## B. NHRC

The court has established a fraternal control over the National Human Rights Commission (NHRC) not in the least because it happens to have a former Chief Justice of India as its chairperson. That the NHRC is seen by the Supreme Court as an extension of itself was clear from its pronouncement in the *Paramjit Kaur* case.<sup>46</sup> This matter began as a PIL when the court suo motu ordered a CBI inquiry into the abduction and disappearance of Jaswant Singh Khalra, an advocate in Punjab. After unravelling the sordid fact of mass cremation of thousands of unidentified bodies by the Punjab police, the court made over the case to the NHRC for determination of compensation to be paid to the families of the victims. Before the NHRC, an objection as to its jurisdiction to hear the case was taken up by the State of Punjab, albeit unsuccessfully. Next it was the Union of India's turn to approach the Supreme Court with an application in the disposed of case, raising the objection that the NHRC lacked the power to decide the claims as they would be time-barred under the parent statute, the Protection of Human Rights Act, 1993 ('Act'). Repelling the objection, the Supreme Court clarified that in such instance the NHRC was acting sui generis, as an arm of the Court, and not limited in its functioning by the Act.

In a continuation of this method of passing on cases before it to the NHRC, the court transferred three disparate PILs on the ground that they involved questions of human rights violations. The first of these cases concerned a PIL filed in 1981 about the functioning of the Agra Protective Home. Even as the PIL was poised to conclude with the formulation of guidelines for the working of the Home, the court on its own passed an order stating that the NHRC would deal with the case thereafter. The only reason for this extraordinary move was that "most of the problems associated with the functioning of the Agra Protective Home are such that they can be better dealt with by the NHRC."<sup>47</sup> Even more surprising was the Supreme Court making over to the NHRC on the same day the cases concerning the functioning of the mental asylums at Ranchi, Gwalior and Agra<sup>48</sup> and the PIL concerning the bonded labour problem in the country<sup>49</sup> by passing orders in the same terms as that made in the case concerning the Agra Protective Home.

## C. Article 142

There are limits too on what the Supreme Court can do. It cannot, for instance, as punishment for contempt of court, strip a lawyer of his licence to practise, a power which can in the first instance be exercised only by the Bar Council of India under the Advocates Act, 1961. However, on 10.3.1995, a three-judge bench of the Supreme Court had, after finding V.C. Mishra, a Senior Advocate, guilty of criminal contempt, inter alia, imposed the punishment of suspending him from practising as an advocate for three years.<sup>50</sup> The court was of the view that neither the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 could fetter its powers and jurisdiction under Article 129 under which it was acting sui generis. It also invoked its inherent powers under article 142. When faced with an earlier decision of a larger bench in *Prem Chand Garg v. Excise Commissioner, U.P.*<sup>51</sup> which had held that the Supreme Court could not, while exercising its powers under article 142, ignore a substantive statutory provision dealing expressly with the subject, the court in *V.C. Mishra* simply declared that *Prem Chand Garg* was no longer good law.



Ten days after the decision, a worried Supreme Court Bar Association filed a public interest litigation under article 32 for a bare declaratory relief that notwithstanding the judgment in V.C. Mishra, the Bar Council of India alone had, to the exclusion of the high court or the Supreme Court, power under the Advocates Act to suspend or debar an advocate from practice. Despite apparent doubts as to the maintainability of such a petition,<sup>52</sup> a bench of the Supreme Court different from the one that had decided V.C. Mishra admitted the petition and referred the case to a constitution bench,<sup>53</sup> clearly because the question involved vitally affected the legal fraternity and required a re-setting of the limits of the court's powers.

The judgment was pronounced after Mishra's three-year suspension period expired. The court declared that the earlier decision in V.C. Mishra to the extent it suspended the contemner from practice for three years, was wrong, and overruled it on that point.<sup>54</sup> Reaffirming Prem Chand Garg the court recognised that its powers under article 142 were "not meant to be exercised when their exercise may come directly in conflict with what has been... provided for in a statute expressly dealing with the subject".<sup>55</sup> Also, the Supreme Court's power to punish for contempt could not be expanded to determine in a summary manner whether an advocate was guilty of professional misconduct "giving a go-by to the procedure prescribed under the Advocates Act".<sup>56</sup>

A PIL by an advocate of the Supreme Court concerning the rights of the sex workers saw the court having to recall its earlier orders which it perceived as being impermissible even under article 142 of the Constitution. The PIL filed in 1988, and in which a report was submitted by a committee appointed by the court, was disposed of in 1997 with one of the judges on the bench, K. Ramaswamy J, issuing a series of directions to the government to evolve schemes for rescuing women and children from prostitution and their rehabilitation.<sup>57</sup> The other judge, Wadhwa J, dissented on the ground that it would not be proper to interpret the law and give directions without the issue being "squarely raised, parties concerned not informed, pleadings being not there... and that too without hearing the parties".<sup>58</sup> Ramaswamy J, in his order directed that notwithstanding the dissent, his directions should be enforced since a reference to a three judge bench may delay the matter. He sought to justify this extraordinary order by reference to the powers under article 142.

Against the directions issued by Ramaswamy J, a "somewhat unusual review petition"<sup>59</sup> was filed by the Supreme Court Bar Association (SCBA) supported by Gaurav Jain, the PIL petitioner. A three judge bench, which included Wadhwa J, overruled the directions given by Ramaswamy J, and declared: "Article 142 would not entitle a Judge sitting on a Bench of two Judges, who differs from his colleague to issue directions for the enforcement of his order. If this were to be permitted, it would lead to conflicting directions being issued by each Judge under Article 142, directions which may quite possibly nullify the directions given by another Judge on the same Bench. This would put the Court in a untenable position."<sup>60</sup> The case was directed to be placed before the Chief Justice to consider whether a larger bench should now hear it.

## **D. Subordinate judiciary**

The PIL commenced in 1989 by the association of subordinate judges for better conditions of service continued to engage the attention of the Supreme Court. In September 1997 the court directed each of the states to file a comprehensive status report on the action taken by them to implement the directions given by the court earlier.<sup>61</sup> Two months later, finding that the state governments were dragging their feet on giving consent to expanding the terms of reference of the Justice Shetty Commission, set up to recommend revision of pay scales of subordinate judicial officials, to include their staff as well, the court gave a deadline till the end of the day failing which it would be presumed that they had no objection to expanding such terms of reference. The court expressed concern over the possibility that on account of the delay in finalising the revised pay scales there might be an 'anomalous situation' where the staff may be getting a higher pay as per the revision effected for them following the Fifth Pay Commission's recommendations. The court desired "prompt action" to prevent such a situation.<sup>62</sup> The Supreme Court also ensured, through orders made in a disposed of PIL concerning out of turn allotments of government accommodation, that the government made available a bungalow that was acceptable for the accommodation of the President of the National Consumer Disputes Redressal Forum.<sup>63</sup>

## E. Courts and chambers

Lack of space for courtrooms could be one reason for there being a shortage of courts. A committee of three lawyers appointed by the Supreme Court in a PIL by the Delhi Judicial Services Association, visited the Tis Hazari court premises and reported that a number of rooms there lay vacant. The court promptly directed these rooms to be made available to the Delhi High Court to enable setting up of courts.<sup>64</sup> However, on the next date of hearing the court found that the adversarial attitude of the government was not helpful in resolving the issue. It then requested the Chief Justice of the Delhi High Court to convene a meeting with the government officials and find a way out of the problem. It hoped that the administration would “solve the problem in public interest”.<sup>65</sup>

The high courts too were not lacking in responding positively to PILs by lawyers in Kurukshetra,<sup>66</sup> Jalandhar<sup>67</sup> and Bangalore<sup>68</sup> demanding better facilities for courts and chambers for lawyers.

### Legal aid

A PIL filed in the Supreme Court in 1994 by the Supreme Court Legal Aid Committee sought directions for providing effective legal assistance to convicts and undertrials in jails in order to improve their access to justice. On being informed that despite the enactment by Parliament in 1987 of the Legal Services Authorities Act the committees contemplated by the Act had not yet been constituted, the court directed the states and the union government to take steps within two months to effectively implement the provisions of the Act by issuing notifications, framing rules and constituting the legal aid committees at the levels of the *taluks*, the districts and the states.<sup>69</sup> Through repeated monitoring and warnings to the state governments that failure to comply with its orders would result in contempt proceedings being initiated against them,<sup>70</sup> the Supreme Court was able to ensure that the committees contemplated by the Act was constituted in each of the states and union territories. The petition was closed with a series of directions to the states to issue instructions to its officials and the jail authorities to promptly make available to prisoners free copies of judgments, inform them of their right to avail of legal aid and provide them with effective assistance in applying for and obtaining legal aid for pursuing cases before the trial court, the high court and the Supreme Court.<sup>71</sup>

## F. Speedy Disposal of Petty Cases

The mounting arrears of petty criminal cases pending disposal in the subordinate judiciary effectively denies the right to a speedy trial. A PIL which originated in 1980 was finally brought to a close by the Supreme Court 17 years later with a judgment that provided a possible means of remedying the problem. In *Kadra Pahadia v. State of Bihar*<sup>72</sup> the court explained that the object of sections 13 (1) and 18 of the Criminal Procedure Code, 1973 (Cr PC) providing for the appointment, on short-term basis, of special judicial magistrates and special metropolitan magistrates respectively, was to relieve the regular courts of the burden of trying those cases which could be disposed of by such magistrates. The court expected the appointees, who could be retired government servants, to view it as a social obligation “and not expect payment as if they are in the service of the State/ Union Territory concerned”.<sup>73</sup> States, who had not written thus far to the high courts requesting them to make appointments under the said provisions, were asked to do so within a month’s time and also pay costs of Rs.10,000/- each to the Supreme Court Legal Aid Committee.

The issue of conduct of judges figured in a PIL by a lawyer before the Kerala High Court. Although the petition sought to restrain a retired Chief Justice of that court from contesting elections to the *Lok Sabha* from Bihar soon after demitting office, the elections took place before the petition could be finally heard. Nevertheless, the court shared the anguish of the petitioner that judges should not, after retirement, seek elected or other offices.<sup>74</sup> Another PIL served as a reminder to the chronic problem of unfilled vacancies of posts of judges in the high courts. Mohanlal Gupta’s PIL questioning the failure to fill up the large number of vacancies in the Allahabad High Court, was referred by a bench of two judges of the Supreme Court to a larger bench of three.<sup>75</sup>

## IV PUBLIC ACCOUNTABILITY

### A. Hawala case

*Vineet Narain v. Union of India*,<sup>76</sup> a landmark PIL case that commenced in October, 1993 and witnessed continuous monitoring by the Supreme Court through 1996 and 1997, came to a conclusion on 18.12.1997, a month before the retirement of J.S. Verma, CJ who headed the bench that dealt with the matter.<sup>77</sup> The PIL was brought to the court by two journalists and two lawyers aggrieved by the failure of the CBI to investigate the details of illegal payments made by way of *hawala* transactions by Surendra Kumar Jain, his brothers and relatives ('Jain brothers') to several politicians for favours in award of government contracts. These details were found in two diaries and two notebooks ('Jain diaries') seized in a raid in 1991 on the premises of the Jain brothers.

Despite the PIL having been filed in October, 1993 the court was initially reluctant to hear the case and insisted that the petitioners first remove the photocopy of the entire CBI case diary which was annexed to the petition.<sup>78</sup> The first order by the court to the Director, CBI to personally supervise the investigations and report progress to the court was made only on 5.12.1994. Thereafter, the court monitored the case continuously<sup>79</sup> before it delivered its judgment in December, 1997.

The judgment is unique in that it details the progress of the case through various stages and highlights the use of the device of a 'continuing mandamus' which the court described as "a new tool forged because of the peculiar needs of the matter".<sup>80</sup>

That the court virtually controlled the entire investigation is clear from a bare reading of the judgment.

First, since the "continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer"<sup>81</sup> and since "merely issuance of a mandamus directing the agencies to perform their task would be futile",<sup>82</sup> the court "decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of the investigation... so that the court retained seisen of the matter till the investigation was completed and the chargesheets were filed in the competent court for being dealt with, thereafter, in accordance with law".<sup>83</sup>

Secondly, the court "directed that CBI would not take any instructions from, report to, or furnish any particulars to any authority personally interested in or likely to be affected by the outcome of the investigations into any accusation".<sup>84</sup> Further, it stipulated that "this direction applies even in relation to any authority which exercises administrative control over the CBI by virtue of the office he holds, without any exception".<sup>85</sup> Thus, the court made sure that the executive government, and in particular the Prime Minister's Office (PMO) to which the CBI had to report, stood completely excluded from any control over the investigation. This stemmed from the court's perception that the agencies could not perform their duties honestly unless insulated in their functioning from the government.<sup>86</sup>

Thirdly, any transfer of any officer in the investigative teams of the CBI or the Enforcement Directorate was closely supervised by the court. By an express direction<sup>87</sup> the court precluded any other court in the country, including the high court, from entertaining or dealing with any petition that involved "the same question or any question connected with it in any manner".<sup>88</sup>

Fourthly, the PIL petitioners in the case, as well as those in the similar cases of *Anukul Chandra Pradhan v. Union of India* and *Dr. Subramanian Swamy*,<sup>89</sup> were displaced and a senior advocate appointed as *amicus curiae* to assist the court on their behalf. Also, intervention in the proceedings by everyone else was shut out but permission was granted to all who so desired, "to render such assistance as they could, and to provide the

relevant material available with them to the amicus curiae for being placed before the court for its consideration.<sup>90</sup>

Fifthly, some of the hearings were, at the request of the Solicitor General of India, held *in camera*, i.e., by excluding the public. According to the court “this innovation in procedure was made, on request, to reconcile the interest of justice with that of the accused.”<sup>91</sup>

All these steps resulted in the filing of 34 charge-sheets against 54 persons. The court was not unmindful of the related development where another bench of the court had upheld the order of the Delhi High Court discharging some of the accused in the case.<sup>92</sup> The court viewed this as an indication that “either the investigation or the prosecution or both were lacking”.<sup>93</sup> This could be viewed as an anti-climax to the proceedings given the fact that the court had monitored the entire investigation to the exclusion of every other agency. It is impossible to conceive that the CBI was unaware that what it had based its charge-sheets on, the ‘Jain diaries’, was plainly inadmissible evidence. Since the crucial hearings were held *in camera*, it is not possible to discern whether the CBI informed the court of this position at all. With the court monitoring its actions so closely, it does appear that the CBI was under pressure to file charge-sheets irrespective of the nature of the evidence gathered. The praise showered on the CBI by the court in its judgment<sup>94</sup> does seem misplaced.

Once the charge-sheets were filed, the court proceeded to consider the larger question of the constitution and working of the investigating agencies, who, it found in the course of the proceedings, were unable to perform “whenever powerful persons were involved”.<sup>95</sup> The court then drew extensively on the report of the independent review committee (IRC) appointed by the central government which had recommended the need for insulation of the CBI from extraneous influence of any kind. The Attorney General for India informed the court that there was “no negative reaction to the report given by the Central Government”<sup>96</sup> although further action on the report “could not be taken so far because of certain practical difficulties”.<sup>97</sup> However, the court would brook no further delay in the matter. It noticed that in view of its ample powers under article 32 read with 142 and the mandate of article 144 directions were necessary “to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role”.<sup>98</sup> Citing other PIL cases where guidelines had been issued, the court proceeded to give directions for “rigid compliance”.<sup>99</sup> These included directing that the CVC be given statutory status; laying down the terms and conditions of service and procedure for appointment and transfer of the Central Vigilance Commissioner, the director and officers up to the rank of joint director of the CBI, the director of the Enforcement Directorate; the constitution of a nodal agency and a prosecution agency and finally directing that the incumbent director of the CBI should not be continued beyond the date of the expiry of his tenure.

The other important feature of the judgment was the striking down as unconstitutional of directive no.4.7 (3) of the single directive under which the CBI had to take the prior sanction of the ministry/ department concerned before taking up any inquiry, including ordering search, in respect of an officer who was or had been a decision-making level officer. In case the officer to be investigated was or had been a cabinet secretary sanction had to be taken by the CBI from the Prime Minister. The court noted that although section 4 (1) of the Delhi Special Police Establishment Act, 1946 (DSPE Act) provided that superintendence over the CBI vested in the central government, once jurisdiction to investigate an offence as conferred on the CBI by a notification under section 3 of the DSPE Act, the powers of investigation could not be curtailed by executive instruction under section 4 (1). It gave directions as to how the CBI should proceed in such matters thereafter. The court recognised the importance of transparency of the functioning of the CBI as well as the right of the public to information when it directed that “[a] document on CBI’s functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner that does not compromise with the operational requirements of the CBI.”<sup>100</sup>

There could understandably be mixed reactions to the judgment. On the positive side, it could be said that the court was dynamic, fearless and dominating. It was also to keep the investigating agencies on their toes and ensure their legislation from the government of the day. It was able to get the lawyers appearing for all the parties

to cooperate with it and help it achieve the desired result “without adopting the adversarial stance”.<sup>101</sup> It meant business when it did not stop with the filing of charge-sheets but went ahead and rewrote the system of the functioning of investigative agencies by infusing autonomy and insulating them from executive interference. On the negative side, the complete dispensation of the petitioners in a PIL by the court is highly questionable. It probably defeats the very purpose of the jurisdiction and renders petitioners as mere ‘informants’. Also, it effectively silences PIL petitioners whose knowledge and understanding of an issue could be far greater than the *amicus curiae* appointed by the court and that too without their consent. The petitioners are then entirely at the mercy of the *amicus curiae* who as a delegatee of the court’s screening power can decide who can or cannot petition the court and what can or cannot be said by them. In fact, this procedural innovation deprives public-spirited petitioners of their right to espouse a public cause.

Secondly, it bears scrutiny whether the court’s intervention resulted in achieving the real object of undertaking such an exercise. The discharge of every one of the accused in the hawala case could be viewed as a serious undermining of the court’s capacity to oversee and control criminal investigation and the court laying the blame for this with the investigation or the prosecution hardly provides a convincing explanation. It could be asked whether the court was ready to assume power but not be accountable for its use. Lastly, questions will certainly be raised on the wisdom of the court deciding how the CVC, the CBI and the Enforcement Directorate should function, how their personnel should be appointed and for how long and on what terms only because the matter cannot wait any longer, thus rendering the participation of other organs of state, and certainly the public at large, redundant. Not acknowledging and dealing with the practical difficulties expressed by the central government in implementing the IRC’s recommendations, while still directing it to do so, has meant adding one more PIL judgment to the list of those possibly incapable of being fully implemented.

## **B. Fodder scam**

A study in contrast would perhaps be the reaction of the Supreme Court to orders passed by the high court in the proceedings concerning the agricultural fodder scam in Bihar. While disapproving of several portions of the high court’s order monitoring the case, the Supreme Court advised it to look to the orders made by the Supreme Court in the *Hawala* case and connected matters. The high court was reminded that: “The delicate task of ensuring implementation of the rule of law by requiring proper performance of its duty by the CBI and other government agencies, while taking care to avoid the likelihood of any prejudice to the accused at the ensuing trial because of any observation made on merits of the accusation in the present proceeding, has to be performed with the dexterity and tact needed in the conduct of such a proceeding.”<sup>102</sup> When the Patna High Court sought to retain seisin over the matter even after charge-sheets had been filed against the accused in the special court, by giving directions pertaining to the enquiry into the incident relating to the seeking of the aid of the army for executing the warrant of arrest against Laloo Prasad Yadav, the Supreme Court had to interfere. It said: “... since the process of monitoring had already ended with the filing of the charge-sheet... there was no occasion for any of the officers of the CBI to approach the High Court in respect of a matter which was being dealt with by the Special Court or for the High Court to take any action thereon”.<sup>103</sup>

## **C. Police functions**

A retired Director General of Police and other retired colleagues of his petitioned the Supreme Court on the issue of insulating the police in its functioning from executive interference and ensuring transparency in its functioning. The National Human Rights Commission also participated in the proceedings and filed its affidavit. The court required the government to place on record the report of the committee constituted by it to look into the issues raised and also directed that the committee would examine the suggestions given by counsel for the petitioners as well.<sup>104</sup>

## D. LPG scam

The issue of large scale fraud played by a private company on gullible applicants by collecting from them Rs.30 to 35 crores for dealership of LPG and petroleum products privately manufactured engaged the attention of the Supreme Court in *Jagrti Upbhogta Parishad v. State of U.P.*<sup>105</sup> The court had to be approached after attempts to get criminal investigation initiated against the company and its directors failed. The court through a series of orders directed seizure and attachment of the assets of the company, its individual directors and their relatives and monitored the progress of investigations including the arrest of one of the directors of the company.

Another PIL that commenced during the period under review concerned the complaint with regard to the functioning of the Uttar Pradesh State Electricity Board (UPSEB). The court appointed a high-powered committee to enquire into and submit a report to it on the allegations which included large-scale theft of electricity with the connivance of UPSEB officials; loss of coal wagons in transit to the UPSEB, political interference in the functioning of the UPSEB and accountability.<sup>106</sup>

## V. HUMAN RIGHTS

The endorsement of one more draconian legislation that has held the entire north-eastern part of the country in its clutches for over 40 years was a disappointment for PIL petitioners who had placed on the court's record innumerable individual instances of abuse of powers under the legislation. Arrests, detentions, prisoners, riots, child labour and bonded labour were the other issues that engaged the court's attention.

### A. Armed Forces (Special Powers) Act, 1958

The constitutional validity of the Armed Forces (Special Powers) Act, 1958 ('AFSP Act') and the Assam Disturbed Areas Act, 1955 ('ADA Act') was upheld in a batch of cases by the Supreme Court. The AFSP Act was initially enacted in 1948 when it replaced the pre-independence ordinances that had been promulgated to deal with the situation in certain provinces as a result of the partition of the country. By an amendment in 1972 power under section 3 was conferred on the central government to declare an area to be a disturbed area if in its opinion it was "in such a disturbed or dangerous condition that the use of armed forces in aid of civil power is necessary". Under section 4 the armed forces were given extensive powers in a disturbed area – to fire upon or use force even to the causing of death against any person perceived as acting in contravention of any law; to arrest without warrant any person against whom "a reasonable suspicion exists that he has committed or is about to commit a cognisable offence"; to enter and search any premises to make arrests or recover persons or property believed to be wrongfully confined. Section 5 stipulated that the arrested person should be made over to the nearest police station 'with the least possible delay'. Under section 6 no prosecution against any person in respect of anything done under the AFSP Act could be instituted without the previous sanction of the central government. Although it was meant to be for a year, it was continued till 1958 when it was enacted to cover the whole of the State of Assam and the Union Territory of Manipur. Later it was extended to also cover the whole of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura. The ADA act contained provisions similar to the AFSP Act, the only difference being that the powers under the Act were conferred not on the armed forces but on the state police. By an amendment to the Constitution in 1976 article 257-A and entry 2-A in the union list were introduced empowering the central government to deploy armed forces in aid of civil power in a state.

The main case originated as a PIL in 1980 in the Guwahati High Court by the Naga People's Movement for Human Rights (NPMHR) and was dismissed by the Delhi High Court in 1983 after the Supreme Court transferred the case to it. The NPMHR in its appeal to the Supreme Court questioned the validity of the AFSP Act on several counts. First, that Parliament lacked the legislative competence to enact the AFSP Act which was essentially a law with respect to 'public order' which was subject matter under entry 1 of the state list and not a law for deployment of armed forces in aid of civil power. The AFSP Act was in pith and substance a law dealing with 'armed rebellion' contemplated by the emergency provisions and could not be enacted bypassing the safeguards contemplated under article 352. The National Human Rights Commission (NHRC), which was permitted to intervene, supported this submission contending that the circumstances under which the AFSP Act was enacted were similar to 'internal disturbance'; that the AFSP Act was a colourable piece of legislation and a fraud on the Constitution. Section 3 was attacked on the ground that there was no requirement of periodic review of a declaration of a 'disturbed area' which could thus continue indefinitely. The powers of arrest, search and seizure under section 4 were, apart from being arbitrary and unguided, unnecessary since the provisions contained in sections 130 and 131 of the Code of Criminal Procedure, 1973, which contained safeguards, were adequate. To substantiate the contention that there was widespread abuse of powers under the AFSP Act by the armed forces, the petitioners referred to a number of instances and also placed materials on record.

Rejecting each of the grounds of challenge, the Supreme Court held that the AFSP Act was not a legislation in respect of maintenance of law and order and that, therefore, Parliament could validly enact it.<sup>107</sup> It was also not a measure to achieve the same result as contemplated by the proclamation of an Emergency under article 352 of the Constitution and was therefore not a colourable piece of legislation. Section 3 required periodic review every six months and the power conferred thereunder to declare disturbed areas was not arbitrary. The powers under sections 4 and 5 were not arbitrary and the officers of the armed forces were to strictly follow the list of 'Dos and Don'ts' issued by the army authorities and any disregard of them would entail action under the Army Act, 1950. Every complaint of misuse or abuse of powers had to be promptly and thoroughly enquired into and if found correct, the victim had to be suitably compensated and sanction for prosecution of the offender granted under section 6. The ADA Act was also held to be valid on similar reasoning.

The abuse of powers by the police in a disturbed area was established in another PIL by the People's Union for Civil Liberties (PUCL) highlighting the killing in a fake encounter of two villagers of Lunthilian village, Churchandpur District, Manipur by the police at point blank range. Pursuant to an order in 1995 by the Supreme Court,<sup>108</sup> the district judge conducted an enquiry and submitted a report which concluded: "there was no encounter in the night between 3.4.1991 and 4.4.1991 at Nungthulien village. The two deceased, namely, Lalbeiklien and Saikaplien were shot dead by the police while in custody on 4.4.1991".<sup>109</sup> Accepting the report, the Supreme Court noted that although it was a matter of policy of the government whether terrorist activities had to be fought politically or dealt with by force, "this type of activity cannot be countenanced by the courts even in the case of disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them, the proper course for them was to deal with them according to law. 'Administrative liquidation' was certainly a course not open to them".<sup>110</sup> The court ordered compensation of Rs.1 lakh to the families of the deceased and costs of Rs.10,000 to be paid to PUCL by the State of Manipur.

## **B. Arrests**

Conscious of the need to follow up on its extensive directions regarding arrest and detention given in 1996 in *D.K. Basu v. State of West Bengal*,<sup>111</sup> the Supreme Court monitored the implementation of the judgment by bringing the case back on its board through interlocutory applications. The Union of India and the state governments were asked to ensure compliance with the directions within a specified time limit.<sup>112</sup>

### C. Prisoners

A letter written in 1984 to the Supreme Court by a prisoner Rama Murthy from the central jail, Bangalore about denial of rightful wages, 'non-eatable' food and physical and mental torture was registered as a writ petition. Eight years later a report was called for from the district judge, Bangalore. The report which was submitted in 1993 pointed out that visits by prisoners to their homes, their production before courts on the dates of hearing and in hospitals for treatment were not satisfactory. Thereafter in an elaborate judgment in 1996,<sup>113</sup> the court summarised the entire case law concerning prisoners and their rights. It discussed various aspects of problems faced by prisoners: overcrowding, delay in trial, neglect of health and hygiene, streamlining of jail visits, management of open-air prisons. The judgment ended with 'directions' to the state to 'think about liberalising communication facilities', 'deliberate upon enacting a new prison law', 'consider the question of producing undertrial prisoners on remand dates', 'ponder the need of a complaint box in jails' and so on.

The plight of undertrials also figured in *R.D. Upadhyay v. State of A.P.*<sup>114</sup> This PIL brought by an advocate of the Supreme Court in 1994 concerned the difficulties faced by undertrials at Tihar Jail in Delhi in obtaining bail and in complying with bail conditions. The court in 1996 was informed that there were 1930 undertrial prisoners who were in jail for a period ranging from one to 11 years for various charges including murder (880), attempt to murder (89), NDPS (264), rape (137) TADA (122) dacoity and robbery (188). The court directed that in cases of attempt to murder that were pending for more than two years and those of kidnapping, theft, cheating, riots etc. which were pending for more than one year, the persons facing trial should be released forthwith. It further directed that "it shall not be necessary for any of the undertrials to move application for bail. The court shall, suo motu, on the authority of this Court's order, consider the bail cases".<sup>115</sup> Two years later, the court called for a report of compliance from the Delhi government. Each of the states and union territories to which notices had been issued were also asked to furnish details of the undertrials in the various jails in the country.<sup>116</sup> The petition was kept pending for further orders.

Watch Dogs International in its PIL informed the court that '*munshi kedis*', who were convicts in Tihar jail authorised by the prison administration to supervise the movements of prisoners had severely assaulted one Raj Kumar inside the jail and caused his death. The magistrate who conducted an inquiry under section 176 Cr PC confirmed the cause of death and recommended that the system of '*munshi kedis*' must be reviewed. The Court asked the Inspector General of Prisons to explain under what authority these '*Munshi Kedis*' were working and what steps had been taken to prevent the misuse of the authority given to them.<sup>117</sup> In a related petition the court ordered compensation of Rs.2,50,000 to be paid by the state to the widow of the deceased prisoner.<sup>118</sup>

Although work may be taken from prisoners, they are not entitled to demand minimum wages. In a reversal of the trend thus far to expand the rights of prisoners, the Supreme Court declared<sup>119</sup> that it was lawful to employ prisoners, sentenced to rigorous imprisonment, to do hard labour whether the prisoner consented to it or not. While prisoners should be paid equitable wages, the state could deduct from the minimum wage the cost of food and clothes supplied to the prisoner in the jail.<sup>120</sup> The states were asked to consider enacting legislation to provide for a portion of the prisoner's wages being set apart for being paid to the victims as compensation. One of the judges went so far as to say that "there will be no violation of article 23 if prisoners doing hard labour when sentenced to rigorous imprisonment are not paid wages... Though prison reforms are a must and prisoners doing hard labour are now being paid, but the message must be loud and clear and in unmistakable terms that crime does not pay... We cannot make prison a place where the object of punishment is wholly lost."<sup>121</sup>

In another PIL the Supreme Court upheld the validity of clause (5) of section 162 of the Representation of the People Act, 1951 which prohibited persons "confined in a prison to whether under a sentence of imprisonment or otherwise, or is in the lawful custody of the police" from voting at an election. The court rejected the argument that this created an unfair discrimination against those in prison on account of their inability to furnish sureties or on the pretext of breach of peace since those who may be even convicted but were released on bail could vote. The Court simply declared that: "The classification of persons in and out of prison separately is



reasonable”.<sup>122</sup> Without dealing with the anomaly in the election law where a person charged with an offence and is imprisoned can contest elections, the court said “... if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable”.<sup>123</sup> The court’s assumption that a person is in prison as a result of his own conduct and therefore “cannot claim equal freedom of movement, speech and expression with others who are not in prison”<sup>124</sup> is to say the least oblivious to the reality that, even according to the police, a majority of the arrests made are unnecessary and unjustified.<sup>125</sup>

## D. Riots

Instituting a commission of inquiry into a communal riot or any serious law and order problem is the standard response of a government to tide over the crisis. Then comes a period of amnesia when either the report is allowed to gather dust, or is not considered or acted upon, or the government may disagree with the findings. Sometimes a successor government may even wind up a Commission set up by its predecessor simply by the expedient of not extending the time for the completion of the exercise.

The communal riots in Meerut in September and October 1981 left many killed and wounded. The Uttar Pradesh government appointed Justice C.D. Parekh to inquire into the incidents and submit a report. Meanwhile a PIL was also filed in 1984 in the Supreme Court. The Commission submitted its report in 1988. In 1996 the court asked the government to file an affidavit to substantiate its claim that the recommendations made in the report was yet to be considered by the Cabinet and that the information earlier given to it was incorrect. Remarking on the casual attitude of the state government in not even considering the report for ten years, the Court gave it two months’ time to place on record a summary of the report as well as the action taken thereon.<sup>126</sup>

In December 1991 riots broke out in several areas of Karnataka and on its border with Tamil Nadu following a *bandh* call given by the Karnataka government in connection with its dispute with Tamil Nadu over the sharing of the waters of the River Cauvery. With their grievances not being redressed by the governments, victims who lost their houses and other property in the arson and looting filed petitions in a representative capacity in the Supreme Court in 1993, *inter alia*, claiming compensation. When the petitions were taken up for hearing in 1996, the Karnataka government informed the court that it was still considering the report of the Justice Venkatesh Commission appointed by it to inquire into the incidents and make recommendations. Ultimately, it informed the court in 1998 that it disagreed with the finding of the Commission that there was a “system failure”. It gave no indication whether it agreed with the rest of the report. The court directed that in the circumstances the writ petitions had to be heard without delay.<sup>127</sup>

The demolition of the Babri Masjid led to communal riots in several parts of the country. To inquire into the riots that took place in Gujarat, the state government appointed I.C. Bhatt J, as a commission on 21.12.1992. One year later, Bhat J was appointed as *Lokayukta* and was replaced by P.M. Chauhan J. Although till the middle of 1996 no proper staff was provided to the Commission, it completed a large portion of its work by examining as many as 1300 witnesses and taking on record over 2000 documents. The Commission was on the verge of submitting its report when the government refused to grant it further extension beyond 1.7.1997. This action was challenged in a PIL. The Gujarat High Court dismissed it accepting the explanation of the government that since there was communal peace and harmony after the riots of 1992, “government thought it proper not to have a post-mortem examination of the circumstances which led to the riots for kindling the feeling of bickering between the members of different communities”.<sup>128</sup>

## Child labour, bonded labour

A writ petition by Bandhua Mukti Morcha filed in 1984 regarding the extensive employment of child labour in the carpet industry in Uttar Pradesh was disposed of 14 years later by the Supreme Court.<sup>129</sup> The Court reiterated that the directions given by it earlier in *M.C. Mehta v. State of Tamil Nadu*<sup>130</sup> were “feasible and inevitable”.<sup>131</sup> The Government of India was directed to convene a meeting of the ministers concerned of the state governments “to evolve principles or policies for progressive elimination of employment of children below the age of 14 years in all employments”.<sup>132</sup> That such orders do not achieve much in terms of actual implementation was brought home clearly in the *suo motu* contempt proceedings initiated by the Supreme Court against the officials of the State of Haryana when it found that its orders regarding bonded labour made in the writ petition brought in 1982 by Bandhua Mukti Morcha, were still not implemented.<sup>133</sup>

A tragic account of the cruelty meted out to child workers was the subject matter of a PIL brought to the Supreme Court by PUCL based on a report by an NGO, ‘Campaign Against Child Labour’. The report pointed out that one Rajput used to go to Madurai in Tamil Nadu and procure children for work by paying paltry sums of Rs.500 to Rs.1,000 to poor parents. These children were then forced into bonded labour. Eight year old Shiva Murugan, so procured, was beaten to death by Rajput. Through the court’s orders, three other boys aged, 13, 15 and 16 years were rescued by the Maharashtra police which was still unable to trace Shiva Murugan’s brother Raja Murugan. Rajput had in the meantime been convicted for the offence of murder. The court ordered a compensation of Rs.2 lakh to be paid by the State of Maharashtra to Raja Murugan for himself and his deceased brother. The other three boys were to be paid Rs.75,000 each.<sup>134</sup>

## VI. PROJECTS

Among the many myths that have grown to discredit the PIL movement is one concerning the detrimental effect it has had on development in general and industrial projects in particular. This perhaps weighed with the Supreme Court so much that it chose a case, which was not a PIL, to hold forth on why interim orders injuncting projects should not be granted in a PIL and that the unsuccessful PIL petitioner must be saddled with the costs generated by the litigation.<sup>135</sup> These observations have received such wide publicity, and approbation from many, despite their being *per incuriam*, that it is necessary to discuss the case in some detail. It also serves as a backdrop for the discussion that follows on the PIL cases concerning projects that were taken up by the Supreme Court and the High Courts in the two years under review.

### A. Raunaq International

Raunaq International was a successful bidder in a tender floated by the Maharashtra State Electricity Board for designing, erecting and commissioning large diameter pipes and steel tanks for one of its thermal power stations. The unsuccessful bidder I.V.R. Construction challenged the award of the contract to Raunaq in a writ petition. The Bombay High Court while admitting the petition passed an interim order staying the letter of intent issued to Raunaq. Raunaq then appealed to the Supreme Court.

In the course of setting aside the High Court’s interim order, the Supreme Court identified the various factors that had to be borne in mind by the High Court while making interim orders. It said: “...unless the court is satisfied that there is a substantial amount of public interest, or the transaction entered into is mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers”.<sup>136</sup>

Immediately following on this, the court inexplicably turned to PIL: “When a petition is filed as a public interest litigation challenging the award of a contract by the state... the court must satisfy itself that the party which has brought the litigation is litigating bona fide for public good... The court can examine the previous record of public service rendered by the organisation bringing public interest litigation. 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. The obvious consequence of such delay is price escalation... If it is a power project which is thus delayed, the public may lose substantially because of shortage in electricity supply and consequent obstruction in industrial development...”<sup>137</sup>

The court went on to say: “Therefore, when such a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further, must provide for the reimbursement of costs to the public in case the litigation started by such an individual or body fails.”<sup>138</sup>

The observations, although clearly *obiter*, would serve to deter High Courts from passing interim orders in PILs that challenge state action in awarding contracts. The apprehensions expressed by the Supreme Court are perhaps unwarranted. The cases discussed hereafter reveal that courts have invariably refrained from interdicting projects much less stopping their progress through interim orders.

## B. Enron

The case concerning the Dabhol thermal power project in Maharashtra, which was awarded to Dabhol Power Company (‘Dabhol’) in which Enron Corporation of the USA (‘Enron’) held majority shares, is one such instance. As a part of a concerted campaign against the project on several counts by a wide cross-section of the citizens, several PILs were filed in the Bombay High Court. Each one of them was dismissed. However, one such PIL, which was again ultimately dismissed,<sup>139</sup> revealed some startling facts about the system of functioning of government in such foreign collaborations.

The State of Maharashtra had in 1993 entered into a Power Purchase Agreement (PPA) with Dabhol. The *Shiv Sena* which made this an election issue and its ally the *Bharatiya Janata Party* (BJP) came to power in Maharashtra in the elections held in 1995. The new government promptly appointed a cabinet sub-committee headed by the Deputy Chief Minister to review the project. The committee’s report found the deal not to be aboveboard and the government decided to scrap the project. The Chief Minister declared on the floor of the legislative assembly that: “This is an anti-Maharashtra agreement. This agreement is mindless and devoid of self-respect and to accept this agreement as it is shall amount to cheating the public”.<sup>140</sup> This was followed up with the state filing a suit in the Bombay High Court seeking a declaration that the PPA entered into by the previous government was null and void. Serious allegations of fraud were made in the plaint and similar submissions were made by the state before the arbitrators in the proceedings initiated by Dabhol in London. In particular reference was made to the statement made before the Committee of the U.S. House of Representatives by Linda Powers, Vice-President of Enron that “Enron spent approximately \$20 million on education and project development process alone, not including any project costs”.<sup>141</sup>

Then the State of Maharashtra did a *volte face* in January, 1996. It reversed the decision to scrap the project, entered into a renegotiated PPA with Dabhol and withdrew the suit filed by it against Dabhol. In turn Dabhol abandoned the arbitration proceedings it had initiated against the state.

The PIL by the Centre of Indian Trade Unions (CITU) challenged both the original as well as the renegotiated PPA between Dabhol and the State of Maharashtra primarily on the ground that it was induced by corruption, bribery, fraud and misrepresentation. In support of this, CITU cited all of the above facts emanating from the stand earlier taken by the state.

The High Court had little difficulty in dismissing CITU's petition on the grounds of delay and laches<sup>142</sup> and *res judicata*.<sup>143</sup> However, it had a few things to say on the "peculiar" and "unprecedented"<sup>144</sup> situation which found the state government doing a turnabout on a project it had earlier denounced. Senior counsel appearing for the state submitted to the court that "the act of scrapping the project and the PPA was motivated by political consideration and was an act of an inefficient government whereas its decision soon thereafter not to persist with the folly and to accept the offer of renegotiation and enter into a modified PPA was an act of sober statesmanship as otherwise it might have resulted into serious economic consequences and a disastrous arbitration award."<sup>145</sup> The Chief Minister's affidavit, filed at the insistence of the High Court, also bore this out. The High Court expressed its "grave concern over such conduct of the Government".<sup>146</sup> It left open the question whether the allegations of fraud, corruption and bribery made by the state in the plaint before the High Court amounted to perjury in view of the subsequent contrary stand taken by it in the present proceedings.

The Supreme Court, in the appeal by CITU, declined to go into the question of the validity of the project "since it is not in public interest now to reopen that question which has been considered by the courts earlier on several occasions..."<sup>147</sup> However, it limited the scope of the appeal to the question of the accountability of the State of Maharashtra for its conduct in the proceedings.

### C. Congentrix

Arun Kumar Agarwal and S.K. Kantha in their PIL in the Karnataka High Court alleged that the award of the contract to Congentrix Corporation of the USA for setting up a 1000MW power project in Mangalore be set aside as it was vitiated by grave improprieties in the form of payment of kickbacks to various persons. They demanded that criminal proceedings be initiated against those involved. The high court was satisfied that a *prima facie* case had been made out requiring a further probe into the allegations. Accordingly it directed the State of Karnataka to get an FIR registered with the CBI for various cognizable offences without naming any person or groups of persons as accused; the investigation was to be completed within a year and monthly progress report of the investigation was to be submitted by the investigating officer to the registry of the high court in a sealed cover.<sup>148</sup> The Supreme Court while admitting the state's special leave petition, stayed the order of the high court, thus ensuring that the project was not in any way hampered by the high court's order.<sup>149</sup>

### D. Sardar Sarovar

The PIL by the *Narmada Bachao Andolan* in the Supreme Court challenged the validity of the award of the Narmada Water Disputes Tribunal ('NWDAT Award') as well as the construction of the 3,000 odd big and small dams across the Narmada, including the biggest of them all – the Sardar Sarovar – *inter alia*, on the ground that the state had failed to ensure complete rehabilitation of the millions of oustees as envisaged by the NWDAT award. At one stage of the hearing of the PIL the Attorney General appearing for the Union of India raised a preliminary objection that under Article 262 of the Constitution read with section 11 of the Inter-State Water Disputes Act, 1956 the Supreme Court had no jurisdiction to determine the question of validity of the NWDAT award. It was also pointed out that a similar preliminary objection had been raised by the State of Gujarat in the appeal filed in the Supreme Court by the State of Rajasthan against the NWDAT award and the court had then referred that appeal to the constitution bench. Accordingly the court hearing NBA's PIL directed that the Union of India's preliminary objection also be considered by the constitution bench.<sup>150</sup> Nevertheless, all the parties in the PIL agreed that notwithstanding the question of jurisdiction having been referred to a larger bench, the regular bench could continue to examine the question of relief and rehabilitation of the oustees.<sup>151</sup>

## E. High courts

The high courts have been equally reluctant to interfere with ongoing or proposed projects. Thus, the Kerala High Court, on two occasions, refused to interfere with the Goshree Project that proposed to link mainland Cochin with the nearby islands through a series of bridges.<sup>152</sup> The Karnataka High Court rejected the challenge to the acquisition of 5033 acres of land in Bangalore North for an international airport,<sup>153</sup> the Bombay High Court dismissed the PIL challenging the Goa Power Purchase Agreement<sup>154</sup> and the Delhi High Court negated the PIL questioning the 200 MW Apollo Power Project.<sup>155</sup> The Gujarat High Court dismissed a PIL by the Gujarat Navodaya Mandal questioning the permission granted under the Wildlife (Protection) Act, 1972 by the central government to the Moti Khavdi Refinery project of Reliance Petrochemicals Limited for laying pipelines through the Marine National Park for transporting crude oil. The High Court was satisfied that the central and state governments had taken necessary precautions. Also, the dismissal of an earlier PIL challenging the project would constitute constructive *res judicata*.<sup>156</sup>

## VII ENVIRONMENT

The Supreme Court in an order made in a PIL by M.C. Mehta, started in 1985, pondered why despite the enactment of the Environment (Protection) Act (EPA) in 1986 the state had not discharged its duty thereunder thereby necessitating the court's interference time and again. The authority contemplated under section 3 (3) of the EPA was not yet constituted and since further delay, in view of the deteriorating environment, could not be permitted the court had to give directions "to require the performance of its duty by the central government".<sup>157</sup> Its orders in environment matters have been premised on this theme thus crossing the dividing line between law and policy as is evident from the cases under review.

### A. Forests

In December, 1996 the Supreme Court had made a far-reaching order in the matter relating to conservation of the country's forests with a view to examining "all aspects relating to the National Forest Policy".<sup>158</sup> It had, to begin with, clarified that the word 'forest' in section 2(i) of the Forest Conservation Act, 1980 (FCA) would mean all forests as shown in the government record irrespective of prior or later ownership or classification. Further, all non-forest related activity – including running of saw mills and mining – being carried on without the permission of the central government under the FCA would stop forthwith. There was a complete ban on felling of trees in the forests of Tirap and Changeling in Arunachal Pradesh. Movement of cut trees, trees and timber from any of the seven north-eastern states to any part of the country by rail, road or waterways was stopped forthwith. Specific orders were made with respect to Himachal Pradesh, the hill regions of Uttar Pradesh and West Bengal, Jammu & Kashmir and Tamil Nadu. State governments were directed to constitute expert committees, *inter alia*, to assess existing forest cover and relate their survival to the available capacity of saw mills. Workers of closed saw mills were to be paid emoluments for the season.

The court over the next two years monitored the proceedings through the device of 'continuing mandamus'. A special bench would hear the case almost once a month or even more often. An *amicus curiae* was appointed to assist the court and only he and the counsel for the state and central governments were permitted to address the court. Any person with any grievance had to first approach the *amicus curiae* who would screen the application and place it before the court at his discretion. All other courts in the country were enjoined from entertaining applications pertaining to the matter before the Supreme Court.

Three months later, finding little progress in the matter of setting up committees, the Supreme Court constituted a high-powered committee (HPC) to oversee the implementation of the court's directions with regard to the north-eastern states.<sup>159</sup> Under the court's order the HPC virtually substituted the governments of these seven states – it was authorised to permit sale of timber through the state forest corporation, grant permission to saw mills for utilizing timber for conversion into finished produce and empowered in various other ways subjecting the actions of the governments to the control of the HPC.<sup>160</sup> The HPC in its report to the court reported that the court's ban on movement of timber from the north-eastern states had resulted in the piling up of 1.20 lakh cubic metres of illegally felled seized timber in the forests and depots for over one to two years and that since this huge stock was likely to degrade, it had to be disposed of urgently before the onset of the monsoon. Importantly, the court was informed that in view of the dependence of the local people on the forest resources, a complete ban on timber trade was “neither feasible nor desirable”.<sup>161</sup> It recommended putting in place fool-proof institutional arrangements to tackle the multi-dimensional problem. Keeping the HPC in the picture, the court proceeded to pass an elaborate order concerning a variety of issues – transportation and sale of timber, pricing, licensing, forest protection, scientific management of forest and action against officials.

The position statewise also posed problems for the court. In Uttar Pradesh it found that illegal mining in the Uttarakhand region continued despite its orders.<sup>162</sup> It issued contempt notices to the mining officer<sup>163</sup> and constituted a committee to examine the problem.<sup>164</sup> The court had to acknowledge the problems faced by the hill populace for basic fuel needs and had to modify its orders permitting government to collect forest produce, without cutting trees, and distributing them through depots. The court also found that the local mafia was harassing the persons who had cooperated and given information to the committee appointed by the court. The court ordered police protection.<sup>165</sup> The men behind the illegal trade were either not being pursued or were let off by the authorities. This then required stern warnings from the court before the culprits were tracked down.<sup>166</sup>

In Jammu and Kashmir, despite specific orders being made, the court found in January, 1998 that contracts had been given for removal of forest produce. The court stopped this immediately.<sup>167</sup> It recorded continued defiance by the state officials of its orders even as in May, 1998<sup>168</sup> and issued notices of contempt to certain private industries found violating the court's orders.<sup>169</sup>

In Madhya Pradesh, the *Lokayukta's* report revealed that large scale felling of trees in Bastar district had been undertaken to benefit one individual, Viren Netam, the brother of Arvind Netam, the state's minister of forests.<sup>170</sup> Thereafter, the court ordered a CBI enquiry into the violation of its orders and matters covered by the *Lokayukta's* report.<sup>171</sup>

On 10.12.1998, two years after its first major order, the Supreme Court, on a despondent note, said: “We are distressed that many States have either not implemented various directions issued by this Court from time to time... or have committed breach of those directions with the result that the efforts made by this Court to prevent large scale deforestation and for protection and conservation of forests and environment are not bearing the fruit that we expected these to bear.”<sup>172</sup> Nagaland, for instance, had issued a notification notifying an industrial estate for locating wood based industrial units along the entire “foothills of Nagaland” and all areas within one km of national and state highways and state roads. The court found that this was in the teeth of its order of 15.1.1998 since the prior consultation with the Ministry of Environment and Forests which that order required had not taken place. The notification was stayed. The same was the position as regards the notification issued by Assam. The court directed a joint meeting of the state with the Ministry of Environment and Forests.

## B. Delhi traffic

The first signs of the court's proactive role in finding a solution to the chaotic traffic and pollution in Delhi, described by the WHO as "the fourth grubbier city in the world", came in an order made *suo motu* in November, 1996 in which the court disclosed its view that "in the process of considering various measures to control pollution in the city of Delhi, there is likelihood of some restrictions being imposed on the plying of taxis, three wheelers and other vehicles..."<sup>173</sup>

Things precipitated when a year later a school bus laden with children broke the parapet of the bridge and fell into the Yamuna river resulting in a large number of deaths. Two days later, the court, in a 1985 *M.C. Mehta* petition issued far-reaching directions using its powers under article 32 read with article 142 "since the entire scope of the matter falls within the ambit of article 21".<sup>174</sup> After discussing the Motor Vehicles Act, 1988 (MVA) threadbare it concluded that its provisions, in addition to other provisions under the Police Act and Cr PC "confer ample powers on the authorities to take necessary steps to control and regulate road traffic and to suspend/ cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety".<sup>175</sup>

The directions issued included mandating that no heavy or medium transport vehicles, and light goods vehicles being four wheelers, would be allowed to operate on Delhi roads unless fitted with suitable speed-control devices to ensure they do not exceed the speed of 40 kmph; transport vehicles would not be permitted to overtake any four wheel motorized vehicle; bus lanes and bus bays to be demarcated on roads; school buses to be driven only by drivers with at least ten years' experience and wearing distinctive uniforms. Flying squads were to be constituted to ensure strict compliance with the court's directions which were to be publicised through the print and electronic media.

Among the directions given was one whereby all hoardings hazardous to safe traffic movement were asked to be removed. Aggrieved that this direction enabled the authorities to act arbitrarily and without notice to them, the outdoor advertisers' association filed an application for clarification. The court rejected it saying that there was sufficient notice given already to advertisers and no clarification or modification of the order was required.<sup>176</sup> The court, however, issued further directions to the government asking it to freeze the number of two-seater rickshaws (TSRs) using two-stroke engine as it was one of the major pollutants. It also directed framing of guidelines to regulate processions and an action plan for appointing private persons to enforce traffic safety laws.<sup>177</sup>

Thereafter the court took up the implementation of the recommendations of the Bhure Lal Committee set up by the central government under the EPA. Expressing frustration that none of the major actions proposed by the committee in its report of 29.1.1998 were yet implemented, the court on 28.7.1998 approved the directions and the time frame suggested by the committee for undertaking steps including elimination of leaded petrol from Delhi, replacement of all pre-1990 autos and taxis with vehicles on clean fuels, no eight year old buses to ply except on CNG or other clean fuels and converting the entire bus fleet steadily to single-fuel mode on CNG. These were now to be implemented and any violation, the court warned, would invite action for contempt of court.<sup>178</sup> The direction regarding prohibition on the plying of commercial vehicles more than 15 years old was modified at the government's request and was to be effective from January, 1999.<sup>179</sup>

Like in many other PILs, here too the court found on 1.12.1998 that "precious little appears to have been done despite those directions".<sup>180</sup> The court repeated the November 1997 directions and fixed a six-week time limit for their compliance.

## C. Taj

The matters concerning the Taj Mahal continued to engage the attention of the Supreme Court. The permission given for holding a music performance by Yanni gave rise to moments of concern<sup>181</sup> as did the issues concerning the ambient air quality around the monument<sup>182</sup> and the shifting of a slaughter house from its vicinity.<sup>183</sup> The other issues were the closure and relocation of 297 industries within the Taj trapezium<sup>184</sup> and the regulation of sale of tickets for entry into the monument.<sup>185</sup>

## D. Other issues

Other issues taken up by the Supreme Court included solid-waste disposal in the urban metropolises,<sup>186</sup> disposal of hazardous waste,<sup>187</sup> regulation of manufacture and sale of pesticides,<sup>188</sup> depletion of groundwater in Delhi,<sup>189</sup> closure of polluting tanneries along the Hooghly in Calcutta,<sup>190</sup> the constitution of the Coastal Zone Management Committees at the national and state levels,<sup>191</sup> payment of compensation to farmers by polluting industries in Andhra Pradesh,<sup>192</sup> closure of a distillery unit in Erode found polluting the Bhavani river,<sup>193</sup> the safety aspects of laying gas pipelines,<sup>194</sup> and the issuance of fishing permits to tribals residing in the Pench National Park.<sup>195</sup>

The high courts considered various issues concerning the environment in the PILs brought before them. These included the assignment of forest land to a private company for running a hotel,<sup>196</sup> the trade in mammoth ivory<sup>197</sup> and animal skins,<sup>198</sup> closure of a polluting cashew factory,<sup>199</sup> legality of lease for quarrying in a reserve forest,<sup>200</sup> permission to a private industry to construct a jetty in a reserve forest<sup>201</sup> and sale of birds in Bombay.<sup>202</sup>

## VIII. ANCIENT MONUMENTS

The reaction of different benches of the Supreme Court to PILs highlighting the threat to ancient monuments has not been consistent. The monuments in question were the viceregal lodge at Shimla, the ancient tombs located in the Delhi Golf Club premises, the *dargah* at Agra and the tomb of Zauq in Delhi. Like in many other instances, the court has found that there has been no effective implementation of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ('Ancient Monuments Act') under which the government could, for ensuring adequate protection and preservation of ancient monuments, notify them as 'protected monuments'.

The viceregal lodge in Shimla, built in 1888, served as the summer camp of the British raj. Built with exquisite Himalayan gray stone and in an Elizabethan style of architecture, the building was, after independence, rechristened as Rashtrapati Niwas. However, in 1964, after finding that in 10 years not even 120 days had been spent at the lodge by him or his predecessor, the President Dr. Radhakrishnan handed it over to the Indian Institute of Advanced Studies. Thereafter, in 1990 when the cabinet took a decision to convert a part of the lodge into a tourist hotel while purporting to maintain the main part as a historical resort, Rajeev Mankotia sent a PIL to the Supreme Court for protecting the building as a historical heritage and preserving it for posterity. Through a series of orders, the Supreme Court ensured that the government notified the lodge as a protected monument under the Ancient Monuments Act. It lauded the petitioner's effort without which the viceregal lodge "would have desecrated into a five star hotel."<sup>203</sup>



The court expressed similar concern over the desecration of the grave in Delhi of renowned Urdu poet Shaik Muhammad Ibrahim Zauq Dehlavi over which public toilets had been allowed to come up. The court observed that: “the construction of the public lavatories on the grave was the worst type of sacrilege to the literature and the literary men of the country”.<sup>204</sup> Directions were issued to the Archaeological Survey of India (ASI) for relocating the lavatories and for fixing responsibility on those entrusted with the preservation of the monument. The court was again approached with the complaint that the ASI had permitted shooting of a film in the precincts of the *dargah* at Agra. The court directed the ASI not to permit such activity unconnected with the affairs with the affairs of the *dargah* till further orders.<sup>205</sup>

However, Baljit Malik’s attempts to have the Supreme Court examine the danger to the ancient monuments within 176 acres of green area of the Delhi Golf Club<sup>206</sup> in the heart of the capital city were not successful. He also questioned the retrospective renewal of the land lease in favour of the club by the Union of India at unusually low rates and that too four years after the earlier lease had expired. Although one bench of the court felt the matter to be of significant public interest and formulated the questions that required examination,<sup>207</sup> on a subsequent occasion a different bench took a contrary view and dismissed the petition.<sup>208</sup> In response to the petitioner’s grievance that the right of members of the public to the ancient monuments, which was guaranteed under the Ancient Monuments Act, was being negated, the court’s answer was that entry into the club’s premises was open to everyone. This, however, was not even the club’s case.

## IX. TOWN PLANNING AND CIVIC AMENITIES

The decision of the Supreme Court in *DLF Universal Ltd. v. Prof. A. Lakshmi Sagar*<sup>209</sup> reaffirmed the principle that courts should not lightly interfere with administrative decisions taken by the state. In three PILs before the Karnataka High Court, the permission given by the state government for construction of a township comprising 270 country villas on the banks of the Arkavati river was challenged on the ground that there would be consequent depletion in supply of water to Bangalore and also every chance of pollution of the water. The High Court while agreeing with this contention struck down the order granting the permission as it had been granted “for collateral considerations”. The Supreme Court reversed the order after finding that the state government had, while granting the permission, taken into account all the relevant factors. The view taken by it could not be said to be unreasonable.

Local residents’ grievances of violation of planning laws invariably receive a positive response from the high courts. This was the case when Yogendra Singh Tomar of Ambah, Morena district, approached the Madhya Pradesh High Court against the conversion of a space reserved for a park into a shopping complex,<sup>210</sup> when Prathapa Raju complained to the Andhra Pradesh High Court that the 60 feet road connecting Kurnool with Gooty had been illegally realigned to favour certain land owners,<sup>211</sup> when A.C. Siddappa informed the Karnataka High Court that land reserved for a park was granted for setting up educational institutions<sup>212</sup> and when Gulam Kadar Ahmadbhai Memon challenged the orders asking that certain *masjids* be demolished to facilitate road widening in Surat.<sup>213</sup>

The high courts have also had to deal with everyday problems of the urbanites like supply of drinking water,<sup>214</sup> non-enforcement of the regulation concerning wearing of helmets by two-wheeler riders,<sup>215</sup> use of multicoloured horns by motorists,<sup>216</sup> and the menace to traffic caused by stray animals.<sup>217</sup> These cases found directions being issued to municipal authorities to discharge their statutory duties.

## X. WOMEN

### A. Sexual harassment

The judgment in *Vishaka v. Union of India*<sup>219</sup> was a landmark in many ways. Not only did the issue of sexual harassment of women at the workplace get squarely addressed, but the Supreme Court put in place an entire legislative code that would operate as law till such time Parliament chose to act in the matter. The court invoked its powers under articles 32 and 142 to enforce the fundamental right under article 21 and drew in support several international covenants and instruments to refurbish the legal regime within which its orders would be legitimised and enforced.<sup>220</sup> The immediate cause for filing the PIL was the alleged brutal gang rape of a social worker in a village in Rajasthan. Although the court termed such incidents as being in “clear violation of the fundamental rights of ‘Gender Equality’ and the ‘Right to Life and Liberty’ ... under Articles 14, 15 and 21,”<sup>221</sup> it did not discuss that incident or provide any relief to the victim since “that incident is the subject-matter of a separate criminal action and no further mention of it, by us, is necessary”.<sup>222</sup> The guidelines, *inter alia*, providing for a complaints mechanism, were to be strictly followed as “binding and enforceable in law”.<sup>223</sup>

### B. Female foeticide

The issue of female foeticide figured in the PIL by an NGO, Chetna in 1995. The court did not “think it necessary to proceed in the matter”<sup>224</sup> since the Government of India had already commenced a national programme for eradication of female foeticide and infanticide and its counsel had also been handed over the suggestions of the NGO. The court suggested that such issues could be taken up before the NHRC.

### C. Personal laws

The attempt by the Ahmedabad Women’s Action Group, the *Lok Sevak Sangh* and the Young Women’s Christian Association to have the Supreme Court declare certain personal law practices<sup>225</sup> and provisions of statutes<sup>226</sup> as void and unconstitutional failed since the court saw these petitions as involving issues of state policies with which the court will not ordinarily have any concern.<sup>227</sup>

### D. Beauty contests

The hosting of the ‘Miss World 1996’ beauty contest in Bangalore provoked the *Mahila Jagran Manch* to file a PIL in the Karnataka High Court seeking to restrain the host Amitabh Bachchan Corporation Ltd. (ABCL) from holding the contest anywhere in India and the State of Karnataka from extending any facility or cooperation for the contest. After a single judge dismissed the petition as being misconceived, the *Manch* filed an appeal. The division bench of the high court directed that, although the contest could not be stopped, it had to be organised entirely by ABCL as a commercial venture at its own risk and that ABCL would deposit Rs.5 lakhs as security for costs. The beauty contest would be subject to the laws of the land and “there would not be any indecent exposures of the body of the participants amounting to obscenity and nudity”.<sup>228</sup> The Supreme Court stayed these directions and the contest went ahead as scheduled. Later, in a final judgment, the court set aside the directions observing that the high court “would have been well advised not to interfere in the matter and leave it to the authorities to sort it out”.<sup>229</sup> This was relied upon by the Andhra Pradesh High Court in disposing of a PIL by the Andhra Pradesh *Mahila Samkhya* protesting against the staging of the ‘Miss Andhra Personality Contest’.<sup>230</sup>

## XI. MISCELLANEOUS

### A. Freedom of expression

The Kerala High Court in PILs by public-spirited persons held that the calling of a *bandh* (complete stoppage of all activity) by anyone, including the state or a political party, violates fundamental right of the citizen under article 19(1)(g) as it implied a threat that failure to honour the *bandh* call would result in injury to person or property. It declared the calling and holding of *bandhs* to be unconstitutional and that the political parties and organisations that call for *bandhs* would be liable to compensate the government, the public and the private citizen for the loss suffered by them as a result of such *bandh*.<sup>231</sup>

Dismissing the appeals by the Communist Party of India (Marxist) against the judgment, the Supreme Court approved of the reasoning and the conclusion reached by the High Court. It said: “there cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of the fundamental right of an individual or only a section of the people”.<sup>232</sup>

On the basis of an anonymous letter, the Andhra Pradesh High Court send a team of two women lawyers to check out if a local cinema hall in Hyderabad was screening pornographic films as alleged in the letter. On receiving a confirmation from the team, the High Court ordered the closure of the cinema hall for a period and gave extensive directions to the police to strictly enforce the law.<sup>233</sup> The violent protest by activists of a political party against the screening of a film ‘Fire’, which had been duly certified by the censors, led to a PIL being filed seeking police protection. The Supreme Court recorded the assurance of both the Union of India as well as the State of Maharashtra that they would take all steps to protect life and property and provide adequate security whenever necessary.<sup>234</sup>

### B. Health

The Supreme Court monitored the implementation of its orders with regard to establishing blood banks to regulate and control the collection and distribution of blood.<sup>235</sup> It also appointed a committee to examine which drugs required to be banned from manufacture and sale in India and passed specific orders with regard to one of them – ‘Analgin’.<sup>236</sup>

### C. Language and education

Kanhaiya Lal Sethia’s petition to have ‘Rajasthani’ declared as one of the official languages as specified in the Constitution found no takers. The Supreme Court viewed this to be a matter of policy.<sup>237</sup> The Madhya Pradesh High Court agreed with Dr. Amaresh Kumar that “English as imposed is doing more harm in development of the intellect of the child” and directed that students of the colleges in the state would be permitted to write their exams in Hindi from the following academic year.<sup>238</sup>

Ravindra Kumar Rai’s petition seeking a declaration to the State of Maharashtra to hold a common entrance examination for admission to medical colleges in the state for 1998 was successful with the Supreme Court granting the prayer.<sup>239</sup> The Andhra Pradesh High Court streamlined the recognition and affiliation granted to private law colleges in the state by getting the Osmania University to consult the Bar Council of India in such matters.<sup>240</sup>

The issue of *Samatha v. State of A.P.*<sup>241</sup> was whether the word ‘person’ occurring in section 3 (1)(a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, which prohibited transfer of immovable property situated in agency tracts by a person, in favour of one not belonging to a scheduled tribe, also included the state. The Supreme Court answered it in the affirmative. Consequently, all mining leases or renewals thereof granted by the state government in relation to lands which were located in a reserve forest or forest land or scheduled area were held to be void. The right of tribals to land and, therefore, livelihood was also considered by the Kerala High Court<sup>242</sup> and the legislation that existed for the purpose was directed to be strictly enforced.

The Supreme Court put a quietus to the controversy over the proposed awarding of *Bharat Ratna* to Netaji Subhas Chandra Bose, when it recorded the government’s decision to drop the idea.<sup>243</sup>

## XII. CONCLUSION

The cases that were taken up for detailed consideration by the court reflected a perceptible shift to issues concerning governance. The PILs concerning the vulnerable people – undertrials in jails, inmates of mental asylums and protective homes and bonded labour – were concluded by curtain orders, and in some of the cases, in being sent to the NHRC. Human rights issues saw the court deferring to legislative and executive wisdom. The reluctance to strike down the draconian Armed Forces (Special Powers) Act, 1958 which has been demonstrably misused for over five decades, the refusal to recognise any right to information and direct disclosure of the Vohra Committee report on the criminal-politician nexus,<sup>244</sup> the categorical denial of prisoners’ rights against exploitation and to minimum wages were indicative of this trend. Environmental pollution and the subordinate judiciary received attention through the device of ‘continuing mandamus’.

The court’s response to law and development issues reflected the state’s anxiety to ensure that India remained an attractive destination for foreign investors. The court invariably warded off attempts to have the issue of development versus people and the resultant human rights violations resulting from industrialisation discussed within the courts by treating them as non-justiciable.

The Supreme Court performed the role of a lawmaker in many cases in the two years under review. These included *L. Chandrakumar*, which concerned the validity of the constitutional provisions enabling the establishment of administrative tribunals, *Vishaka* which dealt with the problem of sexual harassment of women at the workplace and *Vineet Narain*, where the court created a whole legal regime and reordered the executive hierarchy in relation to investigation of criminal cases involving public servants. The PILs concerning Delhi traffic and pollution, and degradation of forests, witnessed the court entering the policy arena and deciding for the government what steps it should take, and when, in tackling these intractable problems. The court even established its own enforcement mechanism when it constituted a high powered committee to oversee the implementation of its orders in the forest cases.

There was discussion in Parliament over a private member’s bill titled Public Interest Litigation (Regulation) Bill, 1996. The statement of objects and reasons alleged that PIL had become a “modus operandi to harass people”<sup>245</sup> and that such cases were entertained on priority “disregarding the established rules of procedure in the judiciary.”<sup>246</sup> The bill, however, lapsed with the dissolution of the *Lok Sabha*.

The reaction in Parliament also perhaps stemmed from the failure to understand that judicial activism is not altogether synonymous with what the court does in PIL. A.S. Anand J (as he then was) explained this in the context of the judiciary’s intervention in the area of human rights when he said: “It would be wrong to call it as an act of judicial activism when the judiciary in discharge of its constitutional powers seeks to protect the human rights of the citizens in case after case when a citizen has been deprived of his life or liberty otherwise than in accordance with the procedure prescribed by law or when the courts insist upon ‘transparency and ac-

countability' in respect of the orders made or action taken by public servants. The requirement that every State action must satisfy the test of fairness and non-arbitrariness are judicially evolved principles which now form part of the constitutional law".<sup>247</sup>

J.S. Verma, CJ cautioned against any attempt to curb PIL. In a public lecture he said: "The need is to prevent misuse of PIL and not to criticize 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 bathwater. It is primarily for the courts who devised this procedure to practice 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."<sup>248</sup>

## Endnotes

\* Advocate, Supreme Court.

\*\* See Lotika Sarkar, 'Women and the Law', XXXIII-IV ASIL 643.

<sup>1</sup> *Mahesh Chand Bisht v. Union of India* 1997 (7) SCALE SP-22.

<sup>2</sup> *Bharatiya Homeopathy College, Bharatpur v. Students' Council of Homeopathy*, (1998) 2 SCC 449. Although the court doubted the *bona fides* of the PIL petitioner, the students council of the Jaipur College, it did not examine the matter further since it was rejecting their plea even on merits. In *Dr. Meera Massey v. S.R. Mehrotra*, (1998) 1 SCC 88, the court rejected the challenge to the *locus standi* of a history professor who challenged the legality of certain appointments to the Himachal Pradesh University. It said: "He had all the details, fully equipped with facts and the law pertaining to the University. It was not for any personal gain." (*Id.* at 96).

<sup>3</sup> *C. Naganna v. State of Karnataka*, AIR 1997 Kar 48.

<sup>4</sup> *Grama Vikasa Vedike v. State of Karnataka*, 1997 AIHC 4086.

<sup>5</sup> *Joint Action Committee, Protection on Agricultural Land v. Planning Development Authority*, AIR 1998 Gau 79.

<sup>6</sup> *Susanta Kumar Mohapatra v. State of Orissa*, AIR 1998 Ori 171.

<sup>7</sup> *Sanjay Musale v. State of M.P.*, (1998) 6 SCC 616. A material misstatement in a PIL will also invite dismissal with exemplary costs: See *Kamlesh Manilal Mehta v. Amreli Municipality*, AIR 1998 Guj 77.

<sup>8</sup> *S. Jagannath v. Union of India*, (1997) 2 SCC 87. See S. Muralidhar, 'Public Interest Litigation' XXXII ASIL 369 at 385 (1996).

<sup>9</sup> (1997) 6 SCC 577. However, by a separate order, the deadline for closure of shrimp farms was extended: see *S. Jagannath v. Union of India*, 1997 (4), SCALE SP-21.

<sup>10</sup> *Dilip Karambelkar v. Rear Admiral Vishnu Bhagwat*, AIR 1997 Bom 131.

<sup>11</sup> *Dev Sebastian v. P R Kurup*, AIR 1997 Ker 214. Doubtful motives also led to rejection of a PIL by the Kerala High Court in *M.K. Paul v. State of Kerala*, AIR 1997 Ker 69.

<sup>12</sup> *Villagers of Jagatsingh Basantinath Dutta v. State of Orissa*, AIR 1997 Ori 163. See also *P Rajan v. State of Kerala*, 1998 AIHC 1416.

<sup>13</sup> *Raju Coal Suppliers v. Chairman, Gujarat State Electricity Board*, AIR 1998 Guj 137.

<sup>14</sup> *Golden Granites v. K V Shanmugam*, AIR 1998 Mad 150.

<sup>15</sup> *Monika Plastic Pipes (P) Ltd. v. Director of Industries*, AIR 1998 All 111.

<sup>16</sup> *Indian Legal and Economic Forum v. Union of India*, (1997) 10 SCC 728.

<sup>17</sup> In *Gram Seva Pratisthana v. State of Karnataka*, 1997 AIHC 3733, the PIL questioning the construction of a hostel for backward class students was late by two years. In *All Rajasthan Bus Owners Association v. State of Rajasthan*, AIR 1998 Raj 111, the PIL in 1998 sought to question a notification of 1989.

<sup>18</sup> *Giridhari Singh Bapna v. Union of India*, AIR 1997 Raj 24.

<sup>19</sup> *Raja Ram v. State of U.P.*, 1998 AIHC 1016.

<sup>20</sup> *K.M. Nataraj v. State of Karnataka*, AIR 1997 Kar 36.

- <sup>21</sup> *D.S.N.V. Prasad Babu v. Union of India*, AIR 1998 AP 140.
- <sup>22</sup> *Indian Union Muslim League v. Union of India*, AIR 1998 Pat 156.
- <sup>23</sup> *Suja Devi v. Sharad Yadav*, 1998 AIHC 1416.
- <sup>24</sup> *J&K Sharanarathi v. State of J&K*, AIR 1997 J&K 15: The Kerala High Court, however, gave directions to schools asking them to ensure that elections to ‘School Parliament’ were not conducted on political lines: *Satyavan Kottarakara v. State of Kerala*, AIR 1997 Ker 133.
- <sup>25</sup> *S.P. Anand v. H.D. Deve Gowda*, (1996) 6 SCC 734. See S. Muralidhar, *supra* note 8 at 370.
- <sup>26</sup> *Janak Raj Jai v. H.D. Devegowda*, (1997) 10 SCC 462.
- <sup>27</sup> *C. Venkatachalam v. Rabri Devi*, 1997 (5) SCALE 632.
- <sup>28</sup> *Prakash Singh v. Union of India*, (1997) 11 SCC 339.
- <sup>29</sup> *Mobina Begum/ Indian Assn. for Development of Rural Areas v. Union of India*, (1998) 8 SCC 715.
- <sup>30</sup> *Ibid.*
- <sup>31</sup> *Niyamakendram v. Secretary, Corporation of Kochi*, AIR 1997 Ker 152.
- <sup>32</sup> *Parent Teachers’ Association v. Chalil Kunhumum Haji*, AIR 1997 Ker 97.
- <sup>33</sup> The matter concerned illegal felling of trees in the Surpaneshwar Sanctuary: *Ajit D. Padiwal v. State of Gujarat*, AIR 1998 Guj 169.
- <sup>34</sup> *State of Rajasthan v. Prakash Chand*, (1998) 1 SCC 1 at 10.
- <sup>35</sup> *Id.* at 37.
- <sup>36</sup> *Id.* at 40.
- <sup>37</sup> *High Court of Karnataka v. State of Karnataka*, AIR 1998 Kar 327.
- <sup>38</sup> The cause title explains it all: *Suo Moto: News Item: “Power Crisis Paralyzes AIIMS”* 1998 (4) SCALE 17, 24.
- <sup>39</sup> *S.P. Sampath Kumar v. Union of India*, (1987) 1 SCC 124.
- <sup>40</sup> (1997) 3 SCC 261.
- <sup>41</sup> *Id.* at 307.
- <sup>42</sup> These included *Keshavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; *Minerva Mills v. Union of India* (1980) 3 SCC 625; *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1 and *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.
- <sup>43</sup> *Supra* note 40 at 311.
- <sup>44</sup> (1998) 7 SCC 273.
- <sup>45</sup> *Id.* at 281.
- <sup>46</sup> *Paramjit Kaur v. State of Punjab*, 1998 (5) SCALE 219.
- <sup>47</sup> *Dr. Upendra Baxi v. State of U.P.*, (1998) 9 SCC 388 at 389.
- <sup>48</sup> *Rakesh Chandra Narayan v. State of Bihar*, 1998 (1) SCALE SP-14.
- <sup>49</sup> *People’s Union for Civil Liberties v. State of Tamil Nadu*, 1997 (7) SCALE SP-17.

- <sup>50</sup> *Vinay Chandra Mishra, Re*, (1995) 2 SCC 584. As a consequence Mishra was stripped of all elective and nominated posts and offices including that of the Chairman, Bar Council of India. A further punishment was six weeks' simple imprisonment. However, this was to remain suspended for four years and would be activated if he was convicted again for contempt within that period.
- <sup>51</sup> 1963 Supp (1) SCR 885.
- <sup>52</sup> Interestingly, no issue regarding the maintainability of such a writ petition, questioning as it does a judgment of the Supreme Court, was raised by the court. There is a long line of decisions that bars this: See, e.g. *Krishna Swami v. Union of India*, (1992) 4 SCC 605 at 632 followed in *Khoday Distilleries v. Registrar General, Supreme Court of India*, (1996) 3 SCC 114 at 117. There was another difficulty that was apparent, but not asked to be met by the SCBA. There was no mention of violation of any fundamental right, which is a "sine qua non for the exercise of the right conferred by article 32": See *Fertiliser Corporation Kamgar Union v. Union of India*, (1981) 1 SCC 568 at 575.
- <sup>53</sup> The court ordered that "till the disposal of the petition... no other court shall exercise jurisdiction and power in regard to suspension of an erring member of the bar who has been convicted for contempt of court": *Supreme Court Bar Association v. Union of India*, 1995 (4) SCALE 759 at 760.
- <sup>54</sup> *Supreme Court Bar Association v. Union of India* (1998) 4 SCC 409. The unanimous judgment of the court was delivered by A.S. Anand, CJ.
- <sup>55</sup> *Id.* at 432.
- <sup>56</sup> *Id.* at 430.
- <sup>57</sup> *Gaurav Jain v. Union of India*, (1997) 8 SCC 114. According to the Judge, "Counselling, cajoling by persuasion and coercion, as the last resort, are the three Cs" for the successful implementation of such schemes. (*id.* at 137) It is significant that the judgment was delivered one day prior to the retirement of Ramaswamy, J.
- <sup>58</sup> *Id.* at 158.
- <sup>59</sup> As the Supreme Court described it, since the SCBA was not a party to the earlier proceedings. See *Gaurav Jain v. Union of India*, (1998) 4 SCC 270.
- <sup>60</sup> *Id.* at 276.
- <sup>61</sup> *All India Judges' Association v. Union of India*, (1997) 8 SCC 205. The earlier directions are contained in *All India Judges' Association v. Union of India*, (1992) 1 SCC 119 and (1993) 4 SCC 288. See also S. Muralidhar, 'Public Interest Litigation', XXXI *ASIL* 395 at 402 (1995).
- <sup>62</sup> *All India Judges' Association v. Union of India*, 1997 (7) SCALE SP-19.
- <sup>63</sup> *Shiv Sagar Tiwari v. Union of India*, 1998 (3) SCALE 666; 1998 (3) SCALE 671.
- <sup>64</sup> *Delhi Judicial Services Association v. Union of India*, (1997) 10 SCC 750.
- <sup>65</sup> *Delhi Judicial Services Association v. Union of India*, (1998) 2 SCC 369 at 370.
- <sup>66</sup> *District Bar Association, Kurukshetra v. State of Haryana*, AIR 1997 P & H 231.
- <sup>67</sup> *Naresh Kumar Aggarwal v. State of Punjab*, AIR 1997 P & H 303.
- <sup>68</sup> *Advocates Association v. Chief Minister*, AIR 1997 Kar 18.
- <sup>69</sup> *Supreme Court Legal Aid Committee v. Union of India*, (1998) 5 SCC 762.
- <sup>70</sup> *Supreme Court Legal Aid Committee v. Union of India*, 1998 (2) SCALE 81 and *Supreme Court*



*Legal Services Committee v. Union of India*, 1998 (4) SCALE SP-10. The Committee was renamed as such under the Legal Services Authorities Act.

<sup>71</sup> *Supreme Court Legal Services Committee v. Union of India*, 1998 (5) SCALE SP-19.

<sup>72</sup> (1997) 4 SCC 287.

<sup>73</sup> *Id.* at 299.

<sup>74</sup> *Nixon M. Joseph v. Union of India*, AIR 1998 Ker 385.

<sup>75</sup> *Mohanlal Gupta v. Union of India*, 1998 (5) SCALE 499.

<sup>76</sup> (1998) 1 SCC 226.

<sup>77</sup> The other judges on the bench were S.P. Bharucha and S.C. Sen, JJ.

<sup>78</sup> The bench was at this time presided over by M.N. Venkatachaliah CJ. The first effective order was made by the bench headed by J.S. Verma (as he then was) after the retirement of Venkatachaliah, CJ.

<sup>79</sup> For the orders made in 1996 see S. Muralidhar, *supra* note 8 at 389-90. In 1997 the court made orders on April 7 [1998 (1) SCALE SP-14], July 9, [(1997) 5 SCALE 254], August 21 [1997 (6) SCALE SP-6] and September 11 [1997 (6) SCALE SP-16].

<sup>80</sup> *Supra* note 76 at 243.

<sup>81</sup> *Id.* at 237.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> Order dated 1.3.1996 reported in *Vineet Narain v. Union of India*, (1997) 4 SCC 778 at 779.

<sup>85</sup> *Ibid.*

<sup>86</sup> See the court's comment (note 76 at 234): "We must record our deep appreciation of the officers of the CBI and the Revenue Department who actively participated in these proceedings and showed definite improvement in their perception of the rule of law as the case progressed; and their ability to perform improved once they were assured of protection in the honest discharge of their duties".

<sup>87</sup> Order dated 9.7.1997 reported in 1997 (5) SCALE 254.

<sup>88</sup> *Ibid.* At one stage in 1996 when the incumbent CBI director was to retire, his term was extended on the court's orders till the appointment of the replacement. In a similar matter concerning the three criminal cases involving a former Prime Minister, *Anukul Chandra Pradhan v. Union of India*, the court went to the extent of naming the three officers of the government who would be in charge of the investigations: See order dated 2.4.1996 quoted in the judgment in the *Hawala* case *supra* note 76 at 241.

<sup>89</sup> The judgment, *supra* note 76, refers to orders in both these matters (at 240-42).

<sup>90</sup> *Id.* at 234. In an order dated 12.2.1996 in *Anukul Chandra Pradhan* (reported in 1996 (3) SCALE SP-35) the court explained that this was necessary "to avoid the focus on the crux of the matter getting diffused... by the appearance of many persons in the garb of public interest."

<sup>91</sup> *Supra* note 76 at 243.

<sup>92</sup> *Central Bureau of Investigation v. V.C. Shukla*, (1998) 3 SCC 410. The entries in the Jain diaries were held not to constitute admissible evidence against the accused. There being no other

evidence to connect them to the transactions, each of the accused, including the Jain brothers, had to be discharged.

- <sup>93</sup> *Supra* note 76 at 265. The court repeatedly stressed the axiom: “Be you ever so high, the law is above you.” [(1996) 2 SCC 199 at 200-01].
- <sup>94</sup> See *supra* note 86.
- <sup>95</sup> *Supra* note 76 at 234.
- <sup>96</sup> *Id.* at 255.
- <sup>97</sup> *Ibid.*
- <sup>98</sup> *Id.* at 264.
- <sup>99</sup> *Id.* at 266.
- <sup>100</sup> *Id.* at 270.
- <sup>101</sup> *Id.* at 234.
- <sup>102</sup> *Union of India v. Sushil Kumar Modi*, (1997) 4 SCC 770.
- <sup>103</sup> *Union of India v. Sushil Kumar Modi*, (1998) 8 SCC 661 at 663. The court observed that monitoring the working of the CBI did not mean that “normal disciplinary control of departmental superiors over the officers concerned stands transferred to the High Court”. (*Ibid.*)
- <sup>104</sup> *Prakash Singh v. Union of India*, 1997 (2) SCALE SP-5; 1998 (4) SCALE SP-2.
- <sup>105</sup> (1998) 9 SCC 68 (dated 17.11.1997). The other orders are reported in (1998) 5 SCC 640 (6.2.1998); (1998) 2 SCC 66 (20.3.1998); 1998 (4) SCALE 15 (14.5.1998); 1998 (5) SCALE SP-23 (18.9.1998).
- <sup>106</sup> *Suresh Chandra Verma v. UPSEB*, (1998) 2 SCC 66. For decisions of the high courts see: *Dalit Varg Jan Kalyan Samiti v. HPCL*, AIR 1997 P & H 147 (*re*: petrol pump allotment); *Rekha Bhasin v. Union of India*, AIR 1998 Del 314 (*re*: irregularities in the railway reservation system); *Ravjibhai Bhil Adivasi Seva Mandir Commerce College v. State of Gujarat*, AIR 1998 Guj 215 (*re*: accounts of the Gujarat Maritime Board); *S.P. Gururaja v. Executive Member, Karnataka Industrial Areas Board*, AIR 1998 Kar 223 (*re*: allotment of land to a company, M/s BPL, contrary to statutory norms); *Mahendra Kumar Tiwari v. Union of India*, AIR 1998 MP 178 (*re*: the functioning of the railway canteen at Itarsi junction); *PUCI v. Union of India*, AIR 1997 Del 395 (*re*: irregularities in purchase of equipment for hospitals).
- <sup>107</sup> *Naga People’s Movement of Human Rights v. Union of India*, (1998) 2 SCC 109.
- <sup>108</sup> See S. Muralidhar, *supra* note 61 at 416.
- <sup>109</sup> As quoted in *People’s Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433 at 436.
- <sup>110</sup> *Id.* at 437. Although this judgment was delivered in February 1997 nine months prior to the judgment of the Constitution Bench upholding the validity of the AFSP Act, there is no reference made to it in the latter judgment.
- <sup>111</sup> (1997) 1 SCC 416. See also S. Muralidhar, *supra* note 8 at 376.
- <sup>112</sup> *D.K. Basu v. State of West Bengal*, (1997) 6 SCC 642; (1998) 6 SCC 380; 1998 (6) SCALE SP-16.
- <sup>113</sup> *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642. While none appeared for the petitioner, the standing counsel’s appearance was shown for the state though no submissions are recorded in the judgment.

- <sup>114</sup> (1996) 3 SCC 422.
- <sup>115</sup> *Id.* at 424.
- <sup>116</sup> *R.D. Upadhyay v. State of A.P.* (1998) 5 SCC 696.
- <sup>117</sup> *Watch Dogs International v. Union of India*, (1998) 8 SCC 338.
- <sup>118</sup> *Murti Devi v. State of Delhi*, (1998) 9 SCC 604.
- <sup>119</sup> *State of Gujarat v. High Court of Gujarat*, (1998) 7 SCC 392.
- <sup>120</sup> In separate orders the Kerala High Court (in *Prison Reforms Enhancement of Wages of Prisoners, In re*, 1983 KLT 512) and the Gujarat High Court (in *Jail Reforms Committee v. State of Gujarat*, 1985 Cr. Ref. No.2 dated 31.1.1985) the appeals against which were disposed of by the instant judgment, held that this was impermissible since providing food and clothes was an inherent obligation of the state.
- <sup>121</sup> *Id.* at 430-31 per Wadhwa, J. The judge stated categorically: “putting a prisoner to hard labour while he is undergoing a sentence of rigorous imprisonment... cannot be equated with ‘begar’... and there is no violation of clause (1) of Article 23”. (*Id.* at 435).
- <sup>122</sup> *Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1.
- <sup>123</sup> *Id.* at 6.
- <sup>124</sup> *Ibid.*
- <sup>125</sup> In its submission to the Supreme Court in *Prakash Singh v. Union of India* (*supra* note 104) the NHRC referred to the report of the National Police Commission which suggested that “by and large 60 per cent of these arrests were unnecessary or unjustified and such unjustified police action accounted for 43.2 per cent of the expenditure of the jails”. (Submissions of NHRC in W.P. (C) No.310/96).
- <sup>126</sup> *Fazalur Rehman v. State of U.P.*, (1998) 7 SCC 453.
- <sup>127</sup> *V. Ranganathan v. Union of India*, (1998) 8 SCC 201.
- <sup>128</sup> *Jan Sangharsh Manch v. State of Gujarat*, AIR 1998 Guj 133 at 136.
- <sup>129</sup> *Bandhua Mukti Morcha v. Union of India*, (1997) 10 SCC 549.
- <sup>130</sup> (1996) 6 SCC 756. See S. Muralidhar, *supra* note 8.
- <sup>131</sup> *Supra* note 129 at 557.
- <sup>132</sup> *Ibid.* The *Mehta* (*supra*) directions were asked to be implemented.
- <sup>133</sup> See order dated 1.5.1998 in *Bandhua Mukti Morcha v. Union of India*, 1998 (4) SCALE 22.
- <sup>134</sup> *People’s Union for Civil Liberties v. Union of India*, (1998) 8 SCC 485.
- <sup>135</sup> *Raunaq International v. I.V.R. Construction*, 1998 (6) SCALE 456.
- <sup>136</sup> *Id.* at 462.
- <sup>137</sup> *Id.* at 462–63.
- <sup>138</sup> *Id.* at 466, emphasis added.
- <sup>139</sup> *Centre for Indian Trade Union v. Union of India*, AIR 1997 Bom 79.
- <sup>140</sup> *Id.* at 107.

- <sup>141</sup> *Id.* at 84.
- <sup>142</sup> *Id.* 103-04. The original PPA which was challenged was entered into in 1993 and the petition was filed in 1996.
- <sup>143</sup> According to the High Court, the dismissal of the earlier writ petitions challenging the original PPA by the Bombay and Delhi High Courts as well as of the SLPs filed thereafter in the Supreme Court constituted constructive *res judicata* even though the points raised now were not raised in those petitions.
- <sup>144</sup> *Supra* note 139 at 106.
- <sup>145</sup> *Id.* at 105.
- <sup>146</sup> *Id.* at 106.
- <sup>147</sup> *Centre for Indian Trade Union v. Union of India*, 1997 (4) SCALE SP-16. Thus in effect there was no stopping the project throughout these proceedings.
- <sup>148</sup> Order dated 27.2.1998 of the Karnataka High Court in *Arun Kumar Agarwal v. State of Karnataka*.
- <sup>149</sup> *State of Karnataka v. Arun Kumar Agrawal*, 1998 (3) SCALE 440.
- <sup>150</sup> *Narmada Bachao Andolan v. Union of India*, 1997 (4) SCALE SP-20.
- <sup>151</sup> *Narmada Bachao Andolan v. Union of India*, 1997 (4) SCALE SP-21. There was no order by the court stopping further construction to raise the height of the Sardar Sarovar Dam; it was the Union of India which made a statement on 5.5.1995 to the effect that the height of the dam would be maintained at RL 80.30 metres until further orders. This statement was recorded by the court.
- <sup>152</sup> *Institute of Social Welfare v. State of Kerala*, AIR 1997 Ker 45 and *Jacob Vadakkancherry v. State of Kerala*, AIR 1998 Ker 114. In the second case, the high court after examining the report called for by it from the National Environment Engineering Research Institute held that the project was in public interest. It, however, observed that government should resort to reclamation only if other alternatives failed to materialize.
- <sup>153</sup> *H.N. Nanje Gowda v. State of Karnataka*, 1997 AIHC 278.
- <sup>154</sup> *Dr. J.C. Almeida v. State of Goa*, AIR 1998 Bom 191.
- <sup>155</sup> *B.L. Wadhwa v. Union of India*, AIR 1998 Del 219.
- <sup>156</sup> *Gujarat Navodaya Mandal v. State of Gujarat*, AIR 1998 Guj 141.
- <sup>157</sup> *M.C. Mehta v. Union of India*, (1998) 9 SCC 589 at 591.
- <sup>158</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267 (12.12.1996). See S. Muralidhar, *supra* note 8 at 385.
- <sup>159</sup> *Id.*, (1997) 3 SCC 312 (4.3.1997).
- <sup>160</sup> *Id.*, (1997) 5 SCC 760 (8.5.1997).
- <sup>161</sup> *Id.*, (1998) 2 SCC 59 at 60 (15.1.1998).
- <sup>162</sup> *Id.*, (1998) 2 SCC 341 (7.1.1998).
- <sup>163</sup> *Id.*, 1998 (5) SCALE SP-8 (13.1.1998).
- <sup>164</sup> *Id.*, (1998) 6 SCC 190 (15.4.1998).

- <sup>165</sup> *Id.*, 1998 (5) SCALE SP-8 at SP-9 (13.1.1998).
- <sup>166</sup> *Id.*, (1998) 9 SCC 672 (23.1.1998).
- <sup>167</sup> *Id.*, AIR 1998 SC 2553 (29.1.1998).
- <sup>168</sup> *Environment Awareness Forum v. State of J & K*, 1998 (5) SCALE SP-3 (4.5.1998).
- <sup>169</sup> *Id.*, 1998 (3) SCALE 669 (5.5.1998).
- <sup>170</sup> *T.N. Godavarman Tirumulkpad v. Union of India*, (1998) 9 SCC 632 (16.12.1997).
- <sup>171</sup> *Id.*, (1998) 2 SCC 341 (7.1.1998).
- <sup>172</sup> *Id.*, 1998 (6) SCALE SP-17 at SP-18.
- <sup>173</sup> *Suo Motu Proceedings in Re: Delhi Transport Department* (1998) 9 SCC 250 at 251.
- <sup>174</sup> *M.C. Mehta v. Union of India*, (1997) 8 SCC 770 at 777 (20.11.1997). This was the same petition in which it had on 18.11.1997 passed a general order regarding the EPA (see *supra* note 157).
- <sup>175</sup> *Id.*, at 773.
- <sup>176</sup> *M.C. Mehta v. Union of India*, (1998) 1 SCC 363 (10.12.1997).
- <sup>177</sup> *Id.*, (1998) 1 SCC 676 (16.12.1997).
- <sup>178</sup> *Id.*, (1998) 6 SCC 63 (28.7.1998).
- <sup>179</sup> *Id.*, (1998) 8 SCC 206 (22.9.1998).
- <sup>180</sup> *Id.*, (1998) 6 SCALE 384 (1.12.1998).
- <sup>181</sup> *Id.*, (1998) 5 SCC 720 and (1998) 9 SCC 93.
- <sup>182</sup> *Id.*, (1998) 9 SCC 381.
- <sup>183</sup> *Id.*, (1998) 8 SCC 711.
- <sup>184</sup> *Id.*, (1997) 2 SCC 353.
- <sup>185</sup> *Id.*, (1998) 8 SCC 711.
- <sup>186</sup> *Almitra H Patel v. Union of India*, (1998) 2 SCC 416 and 1998 (4) SCALE SP-9.
- <sup>187</sup> *Research Foundation for Science & Technology v. Union of India*, 1997 (5) SCALE 495; 1998 (1) SCALE 184; 1998 (2) SCALE 473.
- <sup>188</sup> *Dr. Ashok v. Union of India*, (1997) 5 SCC 10.
- <sup>189</sup> *M.C. Mehta v. Union of India*, (1997) 11 SCC 312.
- <sup>190</sup> *Id.*, (1997) 2 SCC 411 and (1998) 9 SCC 448.
- <sup>191</sup> *Indian Council for Enviro-legal Action v. Union of India*, 1998 (4) SCALE SP-11 and 1998 (5) SCALE SP-5.
- <sup>192</sup> *Id.*, (1998) 9 SCC 580; 1998 (4) SCALE 1; 1998 (6) SCALE SP-5.
- <sup>193</sup> *Sugarcane Growers and Shareholders of Shakti Sugars Ltd. v. Tamil Nadu Pollution Control Board*, AIR 1998 SC 2614; *In Re: Bhavani River – Shakti Sugars Ltd.*, (1998) 2 SCC 601 and (1998) 6 SCC 335.
- <sup>194</sup> *Kamini Jaiswal v. Union of India*, (1997) 9 SCC 60.

- <sup>195</sup> *Animal & Environment Legal Defence Fund v. Union of India*, (1997) 3 SCC 549. The court directed the state government to expeditiously notify the area as a National Park under the Wildlife (Protection) Act, 1972.
- <sup>196</sup> *Nagarhole Budakattu Hakku Sthapana Committee v. State of Karnataka*, AIR 1997 Kar 288. The high court quashed the assignment. The company's appeal was disposed of by the Supreme Court by merely permitting it to reinforce the roofing of the existing structures, at its own risk: See *Gateway Hotels and Gateway Resorts Ltd. v. Nagarhole Budakattu Hakku Sthapana Committee*, 1997 (4) SCALE SP-18.
- <sup>197</sup> *Ivory Traders and Manufacturers Assn. v. Union of India*, AIR 1997 Del 267.
- <sup>198</sup> *G.R. Simon v. Union of India*, AIR 1997 Del 301.
- <sup>199</sup> *M.R. Pillai v. Executive Officer, Pathiyoor Panchayat*, AIR 1997 Ker 162.
- <sup>200</sup> *K.V. Shanmugam v. State of Tamil Nadu*, AIR 1997 Mad 338.
- <sup>201</sup> *Ajit D Padiwal v. Union of India*, AIR 1998 Guj 147.
- <sup>202</sup> *Viniyog Parivar Trust v. Union of India*, AIR 1998 Bom 71.
- <sup>203</sup> *Rajeev Mankotia v. Secretary to the President of India*, (1997) 10 SCC 441.
- <sup>204</sup> *M.C. Mehta v. Archaeological Survey of India*, 1997 (2) SCALE SP-25 at SP-28.
- <sup>205</sup> *Wasim Ahmed Syed v. Union of India*, 1997 (5) SCALE 451.
- <sup>206</sup> The club's membership, which reads like a who's who, included bureaucrats, defence personnel and judges. While a swimming pool had come up within the precincts of one monument, a portion of it had been demolished and converted into toilets and changing rooms. Advertisement hoardings had been permitted to be installed on the tomb of another.
- <sup>207</sup> *Baljit Malik v. Union of India*, 1997 (1) SCALE SP-19.
- <sup>208</sup> *Id.*, (1998) 4 SCC 524. Despite the petitioner attaching photographs to show the actual desecration of the monuments, the court declared the petition to be 'vague'. Further it found of no public interest the issue concerning the central government's renewal of the lease on unusual terms.
- <sup>209</sup> (1998) 7 SCC 1.
- <sup>210</sup> *Yogendra Singh Tomar v. State of M.P.*, AIR 1997 MP 124.
- <sup>211</sup> *B. Prathapa Raju v. Principal Secretary*, 1997 AIHC 3778.
- <sup>212</sup> *A.C. Siddappa v. State of Karnataka*, 1998 AIHC 3256.
- <sup>213</sup> *Gulam Kadar Ahmadbhai Memon v. Surat Municipal Corporation*, AIR 1998 Guj 234. The orders were quashed in so far as they required the demolition of a prayer hall of one mosque. For the Supreme Court's clarificatory order regarding the Gyanvapi Mosque see *Mohamed Aslam v. Union of India*, (1997) 5 SCC 475.
- <sup>214</sup> *Hamid Khan v. State of M.P.*, AIR 1997 MP 191 and *Pazha Karuppiyah v. State of Tamil Nadu*, AIR 1997 Mad 144.
- <sup>215</sup> *Pt. Parmanand Katara v. Union of India*, AIR 1998 Del 200 and *S.R. Bhat v. State of Karnataka*, AIR 1998 Kar 153.
- <sup>216</sup> *Nayan Behari Das v. State of Orissa*, AIR 1998 Ori 39.
- <sup>217</sup> *Sanjay Phophalia v. State of Rajasthan*, AIR 1998 Raj 96.

- <sup>218</sup> For a more detailed discussion on the *Vishaka* case, see Lotika Sarkar, “Women and the Law” XXXIII-IV ASIL 643.
- <sup>219</sup> (1997) 6 SCC 241.
- <sup>220</sup> These were the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was ratified by India, the general recommendations of CEDAW and the statement of the Government of India at the Fourth World Conference on Women at Beijing. The court declared that it had “no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution”. (*Id.* at 251).
- <sup>221</sup> *Id.* at 247.
- <sup>222</sup> *Id.* at 246.
- <sup>223</sup> *Id.* at 254. The court disclosed that the “progress made at each hearing culminated in the formulation of guidelines” (*id.* at 249).
- <sup>224</sup> *Chetna v. Union of India*, (1998) 2 SCC 158.
- <sup>225</sup> A Muslim male divorcing his wife by a unilateral triple talaq.
- <sup>226</sup> Muslim Women (Protection of Rights on Divorce) Act, 1986, ss.2 (2), 5(ii) and (iii), 6 and explanation to s.30 of the Hindu Succession Act, 1956, s.2 of the Hindu Marriage Act, 1955, s.3(2), 6 and 9 of the Hindu Minority and Guardianship Act read with s.6 of Guardian and Wards Act, ss.10 and 34 of the Indian Divorce Act and ss.43 to 46 of the Indian Succession Act.
- <sup>227</sup> *Ahmedabad Women’s Action Group v. Union of India*, (1997) 3 SCC 573 at 575.
- <sup>228</sup> As noted in *Amitabh Bachchan Corporation Ltd. v. Mahila Jagran Manch*, (1997) 7 SCC 91 at 94.
- <sup>229</sup> *Id.* at 95. The court said: “These are not matters which can be judicially assessed and the pressure which the agitators bring to bear ought not to sway the court into exercising jurisdiction”. (*Ibid.*)
- <sup>230</sup> *Miss A.P. Chandra Rajkumari v. Police Commissioner, Hyderabad*, AIR 1998 AP 302.
- <sup>231</sup> *Bharat Kumar K Palicha v. State of Kerala*, AIR 1997 Ker 291. In a separate judgment the High Court held that complete obstruction of roads by processionists and demonstrators was not permissible and that prior notice to the police authorities was mandatory: *Peoples’ Council for Social Justice v. State of Kerala*, AIR 1997 Ker 309.
- <sup>232</sup> *Communist Party of India (M) v. State of Kerala*, (1998) 1 SCC 201 at 202.
- <sup>233</sup> *An Anonymous Letter Unsigned v. Commissioner of Police, Hyderabad*, 1998 AIHC 93.
- <sup>234</sup> *Yusuf Khan v. Manohar Joshi*, 1998 (6) SCALE SP-24.
- <sup>235</sup> *Common Cause v. Union of India*, (1998) 2 SCC 367.
- <sup>236</sup> *Drug Action Forum v. Union of India*, (1997) 9 SCC 609; (1997) 11 SCC 265; 1997 (3) SCALE SP-10, 27 and 1997 (4) SCALE SP-1.
- <sup>237</sup> *Kanhaiya Lal Sethia v. Union of India*, (1997) 6 SCC 573.
- <sup>238</sup> *Dr. Amaresh Kumar v. Lakshmibai National College*, AIR 1997 MP 43.
- <sup>239</sup> *Ravindra Kumar Rai v. State of Maharashtra*, (1998) 3 SCC 183.

- <sup>240</sup> *C.M. Balaraman v. Registrar, Osmania University*, AIR 1998 AP 105.
- <sup>241</sup> *Samatha v. State of A.P.*, (1997) 8 SCC 191.
- <sup>242</sup> *State of Kerala v. P. Nallathampi Thera*, AIR 1997 Ker 181. For the judgment regarding the implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 see: *Javed Abidi v. Union of India*, 1998 (6) SCALE 597.
- <sup>243</sup> *Union of India v. Bijan Ghosh*, (1997) 6 SCC 535.
- <sup>244</sup> *Dinesh Trivedi v. Union of India*, (1997) 4 SCC 306.
- <sup>245</sup> Jagga Kapur (ed.), *Supreme Court on Public Interest litigation*, Vol I, at A-145, A-147.
- <sup>246</sup> *Ibid.*
- <sup>247</sup> “Justice N.D. Krishna Rao Memorial Lecture: Protection of Human Rights – Judicial Obligation or Judicial Activism” by Justice A.S. Anand (1997) 7 SCC (J) 11 at 20.
- <sup>248</sup> R.C.Ghiya Memorial Lecture The Constitutional Obligation of the Judiciary by Chief Justice J.S. Verma, (1997) 7 SCC (J) 1 at 7. In the same lecture he disclosed that the Supreme Court had constituted a committee to revise the Supreme Court Rules and that he had asked the committee to introduce a separate chapter on PIL, which would contain general rules for guidance to maintain uniformity.





