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I. INTRODUCTION

THE NINETIES was an active decade that witnessed the development of public interest litigation (PIL) as an integral part of the functioning of constitutional courts. The last year of the decade provided an opportunity to pause and reflect on the shift, if any, in the functioning and response of the judiciary to issues and concepts. This has occasioned a change in the structure of this year's survey.

If the years past had witnessed the developments of judicial doctrines, the year under review revealed the differences in their interpretation and application. That PIL is a dynamic and evolving jurisdiction that reflects, in some ways, the conflicting interests in civil society, is evident particularly at the stage of implementation of judicial orders. Two distinct responses are discernible. A court may insist on compliance without compromise or it may have a rethink about its earlier orders in view of the anticipated consequences. One outcome of the latter is the lack of finality. Another is the tacit acknowledgment of fallibility.

Justiciability concerns continued to occupy much of the courts' time. Guarding against abuse of process and re-defining limits of interference was simultaneous with efforts to 'discipline' the jurisdiction procedurally.

The frequency with which cases involving political persona were brought before courts in PIL warranted separate treatment. Regrouping of cases is explained in part by those pertaining to the environment, which constituted a bulk of the PIL cases, being dealt with in a separate survey.

II. DOCTRINES AND APPLICATION

PIL's signal contribution to Indian jurisprudence has included the concepts of relaxed rule of standing[1] and of compensation for constitutional tort.[2] Later years saw the development of legal doctrines,[3] including the ones relating to public trust and misfeasance in public office. The court has invariably drawn on the principles developed in the law of torts and assimilated them into the principles of liability for constitutional wrongs. The year under review saw the court adopt an inconsistent approach in applying the doctrines of public trust, misfeasance and exemplary damages. Even the rule of locus standi in PIL cases came to be questioned in a fundamental way.

Public trust

In 1996 three ministers of the central government stood indicted in decisions of the Supreme Court in different PILs questioning their arbitrary actions. In Common Cause v. Union of India,[4] the allotments of petrol pump outlets to 15 persons made by Captain Satish Sharma as Petroleum Minister out of the discretionary quota were found to be "arbitrary, discriminatory, mala fide, wholly illegal"[5] and quashed by the court. The court held that a minister "cannot commit breach of the trust reposed in him by the people"[6] and that "Capt. Satish Sharma has betrayed the trust reposed in him by the people under the Constitution."[7] Accordingly the court directed Satish Sharma to show cause why a direction should not be issued to the police "to register a case and initiate prosecution against him for criminal breach of trust or any other offence under law."[8] Referring to the tort of misfeasance in public office, the Supreme Court unambiguously said: "We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant."[9] It then went on to require Satish Sharma to show cause why "he should not, in addition, be made liable to pay damages for his mala fide action."[10] After hearing his counsel, the court directed Satish Sharma to pay Rs.50 lakhs as exemplary damages to the government exchequer.[11] Citing the decision of the House of Lords in Broome v. Cassell & Co. Ltd.[12] the court held: "the legal position that exemplary damages can be awarded in a

case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable."[13]

Soon thereafter, in dealing with the question of arbitrary allotments of shops by Urban Development Minister Smt. Sheila Kaul, the court again drew on the principle of misfeasance in public office to explain the basis for award of exemplary damages.[14] The court further explained that mere absence of injury or loss to third parties would not make the principle inapplicable since the injury was to "the high principle in public law that a public functionary has to use its power for bona fide purpose only and in a transparent manner"[15] and the loss was to the state exchequer which would have earned higher revenue had a tender been called.

The public trust doctrine was invoked by the Supreme Court in M.C. Mehta v. Kamal Nath.[16] The court cancelled the allotment of land made by the environment ministry to the hotel owned by Kamal Nath the former Minister of State for Environment. The running of the hotel had resulted in pollution of the Beas river. The court traced the evolution of the public trust doctrine in American law and concluded that it was part of Indian jurisprudence as well.[17] The doctrine enjoined the government to protect resources of great importance to the people, like air, water, sea and forests, for the enjoyment of the general public rather than to permit their use for private ownership.[18]

Common Cause v. Union of India[19] stood revived with Satish Sharma filing a review petition challenging the correctness of the earlier orders directing him to pay exemplary damages and the police to register a criminal case. The unanimous judgment allowing the review petition questioned the very basis of the earlier judgments in more ways than one. The court now believed that the petitioner, Common Cause, not having been an applicant itself, could not have questioned the allotment of petrol outlets to others. In other words, "its own interest was not injured in any way nor had the petitioner made allotment in favour of one of the applicants maliciously or with the knowledge that the allotment would ultimately harm the Common Cause."[20] Secondly, although the quashing of the arbitrary allotments was acceptable to the review court, the order directing the petitioner, a minister and a part of the central government, to pay exemplary damages on account of the tort of misfeasance in public office was not. According to the review court this was impermissible in proceedings under article 32 "as the court cannot direct the Government to pay the exemplary damages to itself."[21] Thirdly, even while the court agreed that "the conduct of the petitioner in making allotments of petrol outlets was atrocious, specially those made in favour of Members, Oil Selection Board or their sons etc., and reflects a wanton exercise of power…",[22] it fell short of misfeasance in public office which was a specific tort, the ingredients of which were not wholly met in the case. Thus, there was no occasion to award exemplary damages.

Fourth, in dealing with the question whether the CBI could have been directed to investigate the offence of criminal breach of trust by Satish Sharma, the review court found that the earlier bench had not been justified in invoking the doctrine of public trust. In its opinion "the doctrine cannot be invoked in fixing the criminal liability and the whole matter will have to be decided on the principles of criminal jurisprudence."[23] It opined that no case for criminal breach of trust was made out against Satish Sharma on the basis of the judgment passed earlier. Lastly, the direction to the CBI to investigate any other offence was held to be violative of Satish Sharma's right to life under Article 21. The court said, "he cannot be hounded out by the police or CBI merely to find out whether he has committed any offence or is living as a law-abiding citizen. Even under article 142 of the Constitution such a direction cannot be issued."[24]

A very different approach to the doctrine of public trust was adopted by another bench of the Supreme Court which decided the case of M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu.[25] The case concerned the disposal of municipal property comprising a public park of historical importance by the Lucknow Nagar Mahapalika to a private builder for construction of an air-conditioned underground shopping complex without inviting tenders and without obtaining any project report. The court found that the Nagar Palika's decision was "wholly illegal and smacks of arbitrariness, unreasonableness and irrationality."[26] Significantly, the court held that the Mahapalika had also violated the public trust doctrine which had grown from article 21 of the Constitution.[27] The court refused to be deterred by the fact that the building complex in four blocks had already been constructed. It directed the demolition of the complex and the restoration of the park.[28]

There are several problems with the decision of the review court in Common Cause. First, it has left the court's position on the public trust doctrine unclear. Limiting its application to environmental cases places a narrow construction on the scope of the doctrine that should legitimately cover all public resources. Secondly, the court's decision that the doctrine of misfeasance in public office cannot be established in proceedings under article 32 is likely to be considered per incuriam since there is no reference whatsoever to the judgment of the court in Shiv Sagar Tiwari[29]on this very point. There the court, after referring to three judgments of commonwealth courts,[30] explained why the doctrine was being applied although there was no injury to any third party: "Firstly (sic) and primarily to bring home the position in law that misuse of power by a public official is actionable in tort. Secondly, to state that in such cases damages awarded are exemplary. The fact that there is no injury to a third person in the present case is not enough to make the aforesaid principle non-applicable inasmuch as there was injury to the high principle in public law that a public functionary has to use its power for bona fide purpose only and in a transparent manner."[31] In fact, the review court in Common Cause has already adjudged the outcome of Sheila Kaul's review petition.

Thirdly, and inexplicably, the court's acceptance of Common Cause's locus standi to establish the arbitrariness of the minister's act but not to demand that consequential reliefs in the form of damages be awarded on the specious reasoning that a PIL petitioner has to be an affected party in order to ask for compensation for violation of fundamental rights. The splitting up of locus standi of a PIL petitioner for two inseparable elements of the case on the premise that such petitioner is not an injured party itself challenges an important facet of PIL in a fundamental manner. Fourth, is the court's finding its earlier direction to the CBI to investigate other offences that may have been committed by the minister as being violative of his right to life. This would well invalidate every possible instance of reference of a case in PIL for criminal investigation.

Compensation

PIL has firmly established the principle of award of compensation for constitutional wrongs, as a part of the public law jurisdiction of constitutional courts.[32] This significant contribution of PIL was followed by several high courts in the year under review. The Punjab and Haryana High Court[33] and the Delhi High Court[34] awarded compensation for the death of an innocent child -- the former when a child slipped into an open manhole and the latter when a child ran from the school across the road to drink water and was fatally run over by a moving vehicle. The Karnataka High Court[35] awarded compensation to the victims injured due to the collapse of a multi-storey building constructed without licence and the Gujarat High Court[36] awarded compensation for death of a wife of an unemployed mill worker who had been admitted to a civil hospital for removal of uterus.

The compensation awarded by the Allahabad High Court to the victims of human rights violation perpetrated by the police on the protestors demanding for a separate State of Uttarakhand, was reversed by the Supreme Court.[37] The high court had ordered the state government to pay Rs.10 lakhs to each of the dependants of all the persons who died in police firing, Rs.10 lakh to each of the victims of molestation and Rs.15,000/- each to 398 persons illegally detained by the police. Further the high court directed that the state government was to make reparation to the people of Kumaon and Garhwal Divisions "related to the population (5,926,146: Kumaon-2,943,199 and Garhwal-2,982,947) in the equation of a rupee per month per person for a plan period of five years and this compensation shall be invested amongst the population of Kumaon and Garhwal earmarked specifically for a programme for the upliftment of the women – 50 paise of this reparation shall come from the State of Uttar Pradesh and the other 50 paise from the Union of India."[38] The Supreme Court found that since the high court had not indicated "how the government should make out the whopping amounts", it was "unable to concur with the aforesaid direction. We cannot ignore the reality that major revenue of the State Government is through taxation. But no taxation is possible without legislative sanction."[39]

One more year went past without courts attempting to formulate principles for computing compensation payable in specific instances of constitutional wrongs. The wry comment of the review court in Common Cause in relation to punitive damages might well apply to situations where the court has directed a certain sum to be

awarded as compensation. In wondering how the amount of Rs.50 lakhs had been arrived at by the court in the original judgment, the review court asked: "Why could it not be forty-nine lakhs fifty thousand?"[40]

III. FALLIBILITY AND RESPONSE: REVISITING PIL ORDERS

In the words of a judge: "We would like to believe that the Supreme Court has gone about its task less conscious of its supremacy and more warily with the intuition that the Court, though final, is fallible."[41] That intuition perhaps facilitated the court revisiting its earlier orders with fair regularity. Finality of judicial orders of the Supreme Court has always been vulnerable to reversals by larger benches of the same court.[42] While the court's powers under article 142 to make orders "in the interests of justice" was seen, in the not very distant past, to be wide and unfettered,[43] the recent trend has seen the court revert to the position taken in Prem Chand Garg v. Excise Commissioner, U.P.[44] that the court could not, using that provision, ignore a substantive statutory provision dealing expressly with the subject.[45] This has consequently led to undoing past mistakes.

Satish Sharma was, in a review petition, able to get a different bench to recall the court's earlier directions asking him to pay exemplary damages and directing the police to register a criminal case against him after acknowledging that the earlier judgment contained "errors apparent on the face of the record, which has resulted in serious miscarriage of justice".[46]

But this does not explain the different approach in relation to cases arising out of the orders closing the polluting units in Delhi and ordering their relocation.[47] The industry with the largest workforce, Birla Textiles, was able to get its writ petition challenging the earlier order of the court on surrender of land referred to a bench of five judges, thus effectively reopening a closed issue.[48] The fact that the industry was itself a party to earlier orders of implementation of the main judgment[49] was not a deterrent.[50] On the other hand attempts by the workmen to have the same decision reviewed failed.[51] Attempts by workmen of certain other units to seek implementation of the court's orders regarding payment of wages were also rebuffed by the court and they were asked to approach the industrial tribunals instead.[52] The other significant feature of the Delhi relocation of industries case is that in the three years since the closure order there have been at least five hundred interlocutory applications considered by the court asking for reliefs of modification, clarification, recall and implementation. These applications are a testimony to the problems emanating from the court's perception of the issue as only one of environmental pollution. Even three years after the order, polluting units were not closed down,[53] laid-off workmen not paid compensatory wages[54] and loan facilities made available for relocation were not availed.[55]

Saw mill owners filed a writ petition in the Supreme Court challenging the correctness of its orders in the Forest cases[56] in compliance with which their mills were closed down. The order was questioned, inter alia, as being violative of the petitioner's fundamental right under article 19(1)(g). The court in Sabia Khan v. Union of India[57] termed the petition as "misconceived and based on a total misconception".[58] It said that the petition was "an obvious attempt to question the correctness of the orders of this Court through a writ petition under article 32, which was not permissible."[59] The petition was dismissed with costs of Rs.10,000/- since "Filing of such a petition is an abuse of the process of Court and waste of the time of the Court."[60] Unlike Birla Textiles, these saw mill owners were not even a party to the original closure order and could not obviously have gone to any other forum to ventilate their grievance. That the treatment of their writ petition was diametrically opposite to the one given to the writ petition by Birla Textiles calls for critical comment.

Petrol pump owners affected by orders of the Supreme Court ordering removal of encroachments in the Delhi Ridge Area[61] were able to get the order recalled on more than one occasion, and that too by interlocutory applications. In the first instance in M.C. Mehta v. Union of India (Re: Link Road Filling Station)[62] the court on a re-examination of its earlier order directing the shifting of the petrol pump found that while one side of the

station abutted the ridge area, the other abutted a road on which pollution causing traffic moved. The court now reasoned: "If air pollution can be allowed on the road then there can be no reason why the petrol filling station which is adjunct to the road, cannot be allowed to bear the pollution of the vehicles…"[63] The court was now of the view that the petrol filling station was subservient to the road and "cannot subserve the purpose of a ridge."[64] The order made earlier was recalled. On the basis of this order, one month later another petrol filling station abutting the ridge was allowed to retain its original site, this time in a review petition filed by it.[65] The Link Road recall order led to further complications necessitating another order in M.C. Mehta v. Union of India (Re: Inder Mohan Bensiwal and Re: Bharat Petroleum Corporation).[66] The Supreme Court had to restore status quo ante the recall order. This was done in two interlocutory applications. The court noticed that action by the land and development officer consequential upon the reversal of judicial orders had resulted in one oil corporation getting two plots and the other none.

The regularity with which earlier PIL orders, presumed to have become final, are revisited with different results, raises doubts about theory of finality in this jurisdiction. Finality also gets challenged when later benches, different in composition, on being asked to apply earlier orders question their correctness. The much acclaimed view of a three judge bench of the Supreme Court in Consumer Education and Research Centre v. Union of India[67] that "the right to health, medical aid to protect the health and vigour to a worker while in service or post-retirement is a fundamental right under Article 21, read with 39 (e), 41, 43, 48-A."[68] has been doubted by a later bench of two judges in Confederation of Ex-Servicemen Assn. v. Union of India[69] and the matter directed to be placed before a bench of five judges.

However, the question whether it is legally permissible for a bench of the high court to undo, in collateral proceedings, an order made by another bench of the same court in a PIL, has been answered in the negative by the Supreme Court in Manohar M. Galani v. Ashok N. Advani.[70] One bench of the high court had, in a PIL, directed criminal investigation into the alleged irregularities in the functioning of the subordinate court in the district of Dakor in Gujarat, and periodic reports were being submitted to the high court. The accused persons then moved a separate petition to quash the criminal proceedings. A different bench of the high court which heard and allowed these petitions, also quashed the PIL. The Supreme Court found the later order to be erroneous since the high court could not have interfered with a collateral proceeding initiated by the high court itself. The converse is also true. In Malik Bros. v. Narendra Dadhich,[71] the Supreme Court set aside a high court order in a PIL which sought to undo the orders of a civil court in collateral proceedings. The dispute between the Indore Development Authority (IDA) and a purchaser of land in a public auction conducted by the IDA was referred by one bench of the Madhya Pradesh High Court for arbitration by consent of parties. After the award had been rendered, a PIL was filed questioning the reference to arbitration alleging irregularities in the entire transaction. A later bench that heard the PIL quashed the arbitration proceedings and the award. The Supreme Court found that PIL was based on conjectures and surmises and that there was no material before the high court justifying its interference.

This injunction is not yet being followed by the high courts. Pursuant to orders of a division bench of the Andhra Pradesh High Court in a PIL concerning alleged illegalities committed in the acquisition of land in Vishakhapatnam for a steel plant there (known as 'Yeluru Land Scam'), the Government of Andhra Pradesh in 1997 appointed a commission of inquiry presided over by a sitting high court judge to investigate the scam. Two years later, in another PIL, a single judge found that the notification appointing the commission of inquiry was bad in law and quashed it.[72] Since the government had already approached the civil courts against the enhancement of compensation and the criminal investigation had been handed over to the CBCID, the court now felt that the commission of inquiry would be an additional financial burden and would serve no purpose.[73] A fresh set of directions was issued for time bound disposal of the civil and criminal cases. Thus, the earlier orders of the division bench in the PIL were undone.

The high court is certainly not powerless to correct obvious errors in the application and implementation of PIL orders. The Patna High Court in two cases acknowledged the serious errors committed by the municipal authorities purporting to act under general orders passed by the court in PILs. In Bhola Sah v. State of Bihar[74] the court found that the demolition of the buildings belonging to three residents by the authorities in the course

of an anti-encroachment drive triggered by the court's orders in a PIL[75] was wholly illegal and unjustified. None of the affected residents was given any notice prior to the forcible demolition. The court found that the demolitions could not be "justified on the plea that they were carrying out the directions of this court"[76] and deprecated that "such brazenly illegal acts were done in the name of this court."[77]

IV. PRAGMATISM AND PRIORITISATION

The strength of PIL lies in its facilitating easy access to courts through flexible rules of procedure. One criticism, however, of some of the orders in PIL has been that all the parties likely to be affected by the court's orders are not given a prior hearing. In environmental matters involving stoppage of polluting activity, the complainants have included both the industry and the workforce.[78] Not all shrimp farm owners were heard before the judgment ordering their closure came to be made, yet they could not on that ground seek to reopen the case.[79] While it is arguable that orders in PIL, which are invariably of a general nature, would inevitably hurt the interests of one party or the other and that it is neither practical nor feasible to wait to hear everyone affected before such orders are made, this would not justify not hearing the affected population that is known and identifiable and which is going to be immediately and directly affected by the court's orders.

The PIL by the Bombay Environmental Action Group (BEAG)[80] in the Bombay High Court reveals yet another use of courts and PIL by environmental groups projecting environmental issues in a uni-dimensional manner. BEAG's complaint in February 1995 to the high court was that the Sanjay Gandhi National Park, a protected forest under the Indian Forest Act, 1927 and a national park under the Wildlife Protection Act, 1986, had been encroached upon in a large scale by slum dwellers who had put up unauthorised structures and that the authorities were indifferent to the resultant threat to the park.

The high court by an order of 12.2.1997 directed a committee of state government officers to recommend short-term measures to tackle the problem of encroachment. The committee submitted its report on 13.3.1997 and on the basis of its recommendations, the high court on 7.5.1997, passed a detailed order in regard to removal of encroachments and eviction of unauthorised occupants. There is no indication whatsoever in the order that the views of the slum dwellers were elicited and considered. The specific directions in the order included:[81]

> (k) The authorities are directed to conduct a survey of the inhabitants of the National Park Division within a period of two months from today. Any person found to be in possession of a hut for which he himself does not have a valid photo pass must be evicted forthwith and the structure demolished subject to clause (o) hereafter…
>
> (n) It is ordered that after carrying out the above mentioned survey all persons whose names are not found in the electoral rolls prepared with reference to 1st January 1995 or any date prior thereto shall be forthwith removed from the National Park Division and structures inhabited by them shall be demolished. All material shall be confiscated so that the same is not used to re-erect the structures.
>
> (o) With respect to slum dwellers residing within the National Park Division whose names appear on the electoral rolls prepared with reference to 1st January, 1995 or any date prior thereto and who continue to live in the same structure, it is directed that the state government shall within 18 months from date relocate these persons outside the boundaries of the National Park Division in keeping with their present policies, and thereafter demolish the structures occupied by them. Until such time electricity and water supply to the structure will also be allowed to be continued.

Notices were to be published in two Marathi and two Hindi newspapers of the intention to demolish and six weeks' time given to a slum dweller to show that he satisfied the requirement spelt out in para (o) of the court's order. Subject to compliance by the authorities with para (o), "all ration shops, schools and dispensaries

presently functioning must be demolished within eighteen months from today."[82] The court's order included detailed directions on deployment of platoons of Special Reserve Police (S.R.P.), provision of an helicopter and appointment of a High Level Monitoring Committee under the Chairmanship of the Collector, Mumbai Suburban District to ensure implementation of the court's order. The court specifically directed that "any action proposed to be taken by the abovementioned Monitoring Committee shall not require any further notice to be given to the encroachers/ slum dwellers".[83]

By the time the case was heard next on 17.7.1999, 20,000 structures had already been demolished. The government informed the high court that of the 60,000 unauthorised structures in the park, about 33,000 were from prior to January, 1995 and were eligible for allotment of alternate sites. The choice of the alternate site at Kalyan, at a considerable distance from the present site, was tacitly approved. The high court appointed yet another committee to ensure that the slum dwellers eligible for alternative accommodation would be re-located and that the work of preparation of lay out marking of rolls and preparation of estimate would be completed by 30.9.1999. All eligible encroachers were to be allotted pitches of 15 ft. by 10 ft. in the identified plots and their structures were to be demolished as soon as the pitches were allotted. Each eligible encroacher would have to pay Rs.7,000/- for the allotment of the pitches and the sum would be payable in four instalments.

The high court also appointed a grievance redressal committee comprising two retired judicial officers and the additional collector. The court would not entertain any individual grievance till the grievance redressal committee vetted such grievance and thought it appropriate to refer it to the court. No other tribunal would entertain any proceedings in that behalf. The decision of the committee would be final and would not be called in question in any court or tribunal. A further committee was appointed for overseeing the work of afforestation of the encroached area. The map prepared and the survey carried out by the forest department and submitted to the court was to be treated as final.[84]

In a further order passed on 13.3.2000 the high court extended the time up to 22.3.2000 for eligible persons to make payment for the alternate sites.[85] Anxious that the demolitions should proceed in the meanwhile, the high court drew up a detailed plan of how many SRP platoons would be made available for ensuring smooth progress of demolitions on the different dates. It even suggested that the committee "can avail of the services of a retired army personnel of the rank of Major or Colonel, that will facilitate the execution of the entire operation."[86] It decried the attempts by the association of slum dwellers to ask for being resettled on the periphery of the park instead of at Kalyan. The court said: "There is no question of this aspect being considered either by the committee appointed by this court or by the petitioners and for that matter even by the court."[87]

The demolitions soon gained momentum and were carried out at the rate of 1,000 structures a day with the alternate sites either not being made available or not being equipped for any form of resettlement. Only about 4,000 families could find resources to pay the amount stipulated. The rest found it plainly unaffordable. This led to protests that were brutally put down. The high court on 17.4.2000 passed a further order prohibiting demonstrations and agitations within 1 km of the periphery of the national park. Having no alternative, the slum dwellers under the banner of the Nivara Hakk Samiti on 26.4.2000 moved an application before the high court seeking to be impleaded in BEAG's writ petition and be given a hearing. The high court refused to pass orders and adjourned the hearing on the application to a date beyond the summer recess of the court.[88]

A telling feature of the above case is that at no stage did the BEAG or the government or even the court think it necessary to solicit the views of the slum dwellers who were in fact the ones directly affected. None of the orders reflect their point of view at all. To compound this, no attempt was made to find out whether the plan of the park submitted by the forest department or the list prepared by it of the eligible encroachers was in fact correct or not. The device of having the aggrieved slum dwellers approach a grievance redressal committee and preventing them from approaching any other court or even the high court directly, meant that they would not have any real remedy against an order made behind their back. Also, it did not satisfy the requirement that they should have in the first place been heard by the high court even before this order was made. Inequitably, the burden was on the slum dweller to show that he was wrongly categorised as being ineligible for an alternate site. Considering the difficulties even otherwise experienced for persons to have their names included in an electoral roll, the choice of the electoral roll as the qualifying requirement meant that a larger number of persons would be rendered ineligible and face the prospect of immediate demolition of their hutments and con-

sequent eviction. Preservation of the national park appears to have been prioritized over the bundle of survival rights – to shelter, health and education, to name a few – of the slum dwellers.

V. JUSTICIABILITY

The courts reiterate what issues are justiciable and what are not in PIL. They have used the law and policy divide to avoid entertaining cases that seek, for instance, introduction of prohibition of liquor or recognition of a language as an official language.[89] The technical nature of the subject matter does not necessarily exclude its justiciability. Environmental cases are one instance of how the court will creatively get around this apparent hurdle. Decisions that further the policy of the state or even a change of policy will not be examined by the court unless shown to be mala fide.

Environment

In A.P. Pollution Control Board v. Prof. M.V. Nayudu[90] the issue was whether the castor oil industry in question was a hazardous one and whether it was likely to result in pollution of the lakes supplying drinking water to the twin cities of Hyderabad and Secunderabad. The Supreme Court acknowledged that "considerable difficulty is experienced by this Court or the High Courts in adjudicating upon the correctness of the technological and scientific opinions presented to the Courts or in regard to the efficacy of the technology proposed to be adopted by the industry,"[91] and although it appeared to be a global phenomenon, the court nevertheless thought it important to interdict since after all "environmental concerns arising in this Court under Article 32 or under Article 136 or under Article 226 in the High Court are of equal importance as human rights concerns. In fact, both are to be traced to Article 21 which deals with the fundamental right to life and liberty…. It is the duty of this Court to render justice by taking all aspects into consideration."[92] The court then referred the issues to the National Environmental Appellate Authority set up under a statute of 1997 and asked it to submit a report to the court.[93] Thus what was acknowledged as being not easily amenable to judicial disposition was brought within the realm of justiciability as the court was determined to act in the matter.

Commissions of inquiry

The communal riots that took place in Meerut in 1982 resulted in the appointment of the Justice C.D. Parekh Commission of Enquiry. The commission submitted its report in 1988 and the state government sat on it for a decade thereafter. In a PIL on the issue, the court asked the government to inform it as to the decision of the government in the matter of implementation of the report.[94] The government thereafter decided to reject the report with a view to "maintain religious and political harmony in Meerut City and to avert any flare-up in any particular class or community".[95] This, according to the court, effectively rendered the writ petition infructuous. However before parting with the case the court expressed its displeasure that reports of commissions of enquiry were not being taken seriously thus affecting the credibility of the entire exercise.

However, another bench of the Supreme Court did not think that matters came to an end merely because the government did not accept the report of a commission of enquiry. The Karnataka Government informed the Supreme Court that it was not accepting the report of the Justice Venkatesh Commission of Enquiry appointed by it to probe into the riots that broke out in 1991 in Bangalore and other pars of Karnataka over the contentious issue of the sharing by the States of Karnataka and Tamilnadu of the waters of the river Cauvery.[96] The Supreme Court was able to get the parties to the PIL to agree to the setting up of an adjudicatory tribunal to be

called the Cauvery Riots Relief Authority to be constituted by each of the states of Karnataka and Tamilnadu. The tribunal comprising three retired district judges would invite claims from all persons affected in the riots that took place in December 1991 and January 1992 in connection with the Cauvery water dispute. The court formulated a detailed procedure to be followed by the tribunals in dealing with the claims. Each tribunal would complete its exercise within 12 months and submit a report to the court. The report as approved by the court would be then complied with by each of the states within three months.[97] Thus, the court displayed judicial creativity in resolving a vexatious problem which had eluded solution for over seven years. Instead of relegating parties to civil remedies or leaving it to the respective governments, the court stepped in to enable the creation of a fact-finding mechanism to determine compensation payable to the victims.

The device of referring an issue for determination by a commission of inquiry is sometimes adopted by the court as a means of finding a temporary solution to a vexed problem. One instance was the direction issued in a PIL by a division bench of the Calcutta High Court that the government of India "shall launch a vigorous inquiry in accordance with law by appointing, if necessary, a Commission of Inquiry as a special case for the purpose of giving an end to the controversy whether (a) Netaji Subhas Chandra Bose is dead or alive (b) if he is dead, whether he died in a plane crash (c) whether the ashes in the Japanese temple are the ashes of Netaji (d) whether he has died in any other manner in any other place and, if so, when and how (e) if he is alive, in respect of his whereabouts".[98] The court also imposed a pre-censorship directive, which prima facie appears unconstitutional, that "the government shall at appropriate level examine/ scrutinize all publications pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch on the question of death or otherwise of Netaji if the same has the effect of disturbing public order and causing incitement to violence and government, if so advised, shall inform all publication houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above."[99]

The plea for the appointment of a judicial commission of inquiry to investigate into deaths of thousands of persons, believed to be naxalites, between the years 1968 and 1972 in West Bengal was made in a PIL filed in 1998 by Sujato Bhadra, Member Secretary of the Association for Protection of Democratic Rights and Abhijit Mazumdar, son of Charu Mazumdar a prominent leader of the naxalite movement. The petition chronicled an inexhaustive list of persons killed in false encounters or due to custodial violence or torture. It was alleged that Charu Mazumdar had himself died in 1972 due to deliberate denial of proper medical facilities while in police custody. The court agreed with the counsel for the petitioners that "with regard to the nature of capital crimes the question of limitation does not and cannot arise."[100] However, the court noted that an earlier notification issued by the State of West Bengal appointing a judicial commission of inquiry to investigate these very killings had been quashed by the Calcutta High Court in 1984 on the ground that there was no material disclosed upon which the government could have formed the necessary opinion.[101] Although in the said decision it had been left to the government to reconsider the matter and take appropriate action, no action had been taken. 27 years had been allowed to elapse without any PIL being filed in the interregnum. In the circumstances the court was "not inclined to entertain the petition at such long lapse of time even if the allegations are distressing…"[102]

Human rights violations

The high court has not reacted uniformly to demands for instituting independent inquiries by the CBI into instances of human rights violations. A PIL by Anweshi, an NGO in Kerala, seeking the reference of a criminal case for investigation by the CBI was rejected by the single judge of the Kerala High Court.[103] The allegation was that an owner of an ice-cream parlour in Kozhikode was behind a racket for procuring girls for important politicians including an ex-minister, police officers and bureaucrats. It was therefore apprehended that the state police would not be able to conduct a fair and impartial investigation. The high court observed that use of epithets like "brain behind the racket", "mafias", "black hands" and "influential persons" were too vague and that the pleadings did not make out a case of bias on the part of the police. The court said: "It is the nature and severity of the offence with the ramifications and fall out that matters in ordering enquiry by an external agency and not the personality of the individuals involved or its moral aspect". [104] Another single judge of the

same high court responded favourably to a similar demand by an NGO Niyamavedi. The PIL was triggered by a startling disclosure by a retired police constable that he had shot one Varghese in a false encounter 28 years earlier under the compulsion of his superiors. The government conceded to the demand of the family of Varghese to institute a judicial enquiry. Nevertheless Niyamavedi's plea that the judicial enquiry would not serve the purpose and that since top police officials were involved it would be embarrassing for the Kerala police to investigate the case, prevailed with the court.[105] The CBI was asked to register a case and complete investigation within six months.

Rights of mentally ill

While monitoring its directions in a PIL concerning conditions of undertrials in jail,[106] the Supreme Court was in 1999 informed that one Ajay Ghosh had been kept as undertrial in Presidency Jail in Calcutta since 1962. The court recorded in December 1999 the sordid tale of the prolonged incarceration of Ghosh for over 37 years without any justification. While there were court orders till May 1964 there were none for a gap of 19 years thereafter till 1983. The court was anguished that "what happened during the period 1964 to 1983, a period of almost 19 years, is not known".[107] After a PIL was filed in the Calcutta High Court in 1989, Ghosh was produced before a division bench in December, 1994 when a direction was given to the Inspector General of Prisons to get him examined by a panel of doctors. Thereafter, Ghosh was transferred to the Antaragram Psychiatric Centre from where reports were sent to the high court till 1999. Although the chief psychiatrist of the Antaragram Psychiatric Centre opined in July 1999 that Ghosh would benefit by staying at an old age home under the supervision of a psychiatrist, nothing was done. The Supreme Court lamented "this case presents a pathetic state of affairs and demonstrates the manners in which Ajay Ghosh was treated. The blatant manner in which the fundamental human rights of Ajay Ghosh, including the rights under Article 21 of the Constitution have been violated presents a depressing picture."[108] The high court was requested to nominate a judicial magistrate to hold an enquiry into the matter of the protracted incarceration of Ajay Ghosh and submit a report within six weeks.

Law making

That the courts will not indulge in law making is a proposition that has been shown to be incorrect by the courts themselves in PIL.[109] The Supreme Court lent further credence to this view by facilitating a statute making exercise to deal with the problem of sexual abuse of children. In Sakshi v. Union of India,[110] the Supreme Court agreed with the petitioner, an NGO working in the area of child sexual abuse, that the 156th report of the Law Commission on the amendment of the Indian Penal Code did not deal with the issues raised in the petition concerning child sexual abuse. The Law Commission was requested once again to consider the issues submitted by the petitioners and "examine the feasibility of making recommendations for amendment of the Indian Penal Code or deal with the same in any other manner so as to plug the loopholes."[111] The Law Commission could take the assistance of the petitioners. The court certainly was lending its weight when it said, "the issues, it appears to us, do need a thorough examination".[112]

The Supreme Court also involved itself in the exercise of ensuring drawing up a Jail Manual for Delhi[113] and ensuring the implementation of the Dowry Prohibition Act, 1961.[114]

Law and policy

In Punjab Communications Ltd. v. Union of India[115] the Supreme Court was examining whether the government could change its policy by providing telephones in Eastern Uttar Pradesh from its own resources into one providing telephones for rural areas in the entire country. The appellant, an Indian company, had submitted a

tender for supply of digital wireless facility to 36,000 identified villages in Eastern Uttar Pradesh. The allegation of the appellant was that under pressure from a multi-national company which had not been short-listed, the department of telecommunications sought to call for fresh tenders for the outmoded analogous system and cancel the earlier tenders. Even while the appellant's challenge to the action was pending before the Supreme Court, Asian Development Bank withdrew the loan on the basis of which the tender was raised. Now it was decided to have a new scheme for providing telecom facilities to all rural areas. The appellant questioned the unilateral change of policy and claimed that its substantial legitimate expectation of award of the contract had been violated. The appellant was supported by a separate PIL filed in the Allahabad High Court which was then transferred to the Supreme Court.

The court held that while "duty to act in good faith is inherent in the process"[116] and that there may be distinction between fraud in public law and private law, it added: "But all these legal principles are not relevant if the so-called or alleged attempt or fraud did not fructify."[117] Further the choice of the policy was for the decision maker and not for the court and "the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision maker who has made the change in the policy and the courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse."[118]

The A.P. Dalit Mahasabha questioned the legality of allotment by the state government of 250 acres land to the International School of Business for setting up of a business management school. It was alleged that the allotment had been made at a price far less than the market value and without inviting any offers by advertisement or tender. The single judge of the high court rejected the PIL primarily on the ground that it was not permissible for the court to "interfere with the policy decision of the government on the ground of any unreasonableness. It is not possible for this court to substitute its own opinion for that of the executive."[119] The division bench while concurring with the single judge and dismissing the appeal added: "the decision is by way of policy and is not subject to judicial review, being not for extraneous consideration or not taking into consideration relevant considerations."[120]

On a lighter note, the demand that the Trivandrum-New Delhi express train should stop at Ernakulam Town Station was also made the subject matter of a PIL. The high court dismissed the PIL stating that this was a policy decision to be decided by the railways.[121]

Other instances

The courts have on the ground of non-justiciability declined to examine the correctness of decisions taken by caste panchayats,[122] examine issues sub judice before a criminal court,[123] entertain a plea for reconvening the Lok Sabha to consider a confidence motion excluding votes of two particular political parties[124] or determine deviations from the model question paper in a board examination paper in one subject.[125] PILs could also be dismissed for vague averments or for want of adequate particulars.[126] In one instance a PIL by a lawyers' association was dismissed when the petitioner could not produce the list of advocates who were its members.[127]

Abuse of process

The most common ground for rejection of PILs is that of abuse of process. The large number of cases that fall under this category include instances of a PIL being filed knowing that an earlier petition on the same subject matter was dismissed and appeal thereagainst was pending in the same high court;[128] a PIL by a police sub-inspector, without disclosing the public interest involved, seeking to reopen a closed issue of genuineness of caste certificates produced by two officers of government;[129] seeking investigation into the amassing of wealth by a minister of state cabinet even while two similar complaints by the petitioner himself were pending before

the Lokayukta,[130] a petition challenging the oath of secrecy of office administered to the deputy chief minister on the ground that there was no such post under the Constitution but seeking costs of Rs.50,000;[131] a PIL by a lawyer and other investors seeking directions against police or investigation into affairs of a company without disclosing material facts known to them;[132] petition seeking direction that manufacturers of firecrackers should not be permitted to affix pictures of Hindu gods and goddesses on crackers as it caused mental agony to persons belonging to the community;[133] a petition by a standing counsel for the Municipal Corporation of Hyderabad alleging exploitation in the matter of payment of fees;[134] a petition based on press statement regarding preventive arrests on poll eve alleging that the arrested persons had been denied the fundamental right to vote;[135] a PIL by a businessman seeking cancellation of the licence of an industry;[136] a PIL filed by a retired IAS officer for wreaking personal vengeance making all manner of allegations against a police officer working in the office of the Lokayukta;[137] and a tile factory owner filing a PIL seeking removal of an executive engineer in the irrigation department on the ground of financial irregularities.[138]

VI. POLITICS AND POLITICAL PERSONA

A PIL provides democratic space within the judicial system to highlight contentious issues of a political nature. Political rivals using PIL to attack each other in perhaps not a new phenomenon.[139] But the year under review revealed the frequency with which the courts are approached by politicians and not always without success. The temptation to involve a prominent political personality in a PIL, as some other cases in this section show, was apparently hard to resist not just for political adversaries.

A former Chief Minister of Tamil Nadu, Jayalalitha, in a PIL in the Madras High Court questioned the permission granted by the government of Tamil Nadu for the use of the Nehru Sports Stadium in Chennai for the 'Platinum Jubilee Celebration' of her arch political rival Chief Minister Karunanidhi. The permission was, according to her, contrary to the express ban imposed by the government itself against the use of the stadium for any purpose other than sports and games. In an interim order, the high court declined to injunct the event but imposed conditions on the user of the stadium. Not satisfied, Jayalalitha approached the Supreme Court.

The Supreme Court was not impressed by the justification offered that the state would be richer by two lakhs of rupees as daily rent for the stadium. "That understanding", the court said, "is totally alien to the purpose for which stadia are built".[140] The fact that Jayalalitha herself had as a chief minister used the stadium for a similar purpose "would in no event be permitted to be quoted as a precedent."[141] The court was nevertheless faced with a fait accompli that "a lot of money has been spent in printing invitations to the invitees"[142] and that if the court were to enforce that ban it "would lead to a lot of confusion to dignitaries who might have plans to come to participate in the celebration".[143] The court, in an order informed by pragmatism, permitted "just this once, and not ever hereafter partial use of the stadium for holding the function confining the user only to the space occupied by the lower and upper galleries, totally isolating the area within the fence above described saving the turfs, natural as well as synthetic."[144]

Jayalalitha was at the receiving end in another PIL which was heard along with the cases decided in J. Jayalalitha v. Union of India.[145] She and her former cabinet colleagues were before the Supreme Court challenging the dismissal by the Madras High Court of their writ petitions questioning the state government notification appointing special judges under the Prevention of Corruption Act, 1988 (PCA) for trying the cases against them for corruption. Even while the matters were pending before the Supreme Court, the political dispensation changed and the central government issued a separate notification under section 3 (1) PCA appointing another set of special judges for those very cases. The import of the later notification issued in February, 1999 was that trial of the cases which had commenced in May 1997 under the earlier notification would have to be re-started, a development that would undoubtedly benefit Jayalalitha and her colleagues. In the Supreme Court three writ petitions were filed challenging the central government notification. One was by the Advocate General of Tamil

Nadu. He had appeared in the high court for the state government in these very matters and the state government had not come forward to challenge the notification of the central government. The Supreme Court did not, therefore, entertain his writ petition but permitted him to assist only as an intervenor. The other writ petition by an advocate, M.A. Chinnaswamy, the court said, did not "deserve to be entertained".[146] The third petition was by VOICE which had first approached the high court with a PIL that had been dismissed on the ground that the matter was sub judice before the Supreme Court "considering its credential for initiating a Public Interest Litigation of this type".[147] Ultimately, the Supreme Court quashed the notification on the ground that the central government had failed to establish the necessity for issuing it.[148]

In the Andhra Pradesh High Court two PILs were filed by the leader of the opposition Congress-I party Y.S. Rajasekhar Reddy (YSR) targeting in particular the Chief Minister (CM) Chandrababu Naidu. The first PIL was filed after the Congress-I party's representation to the Governor to forthwith grant permission to prosecute the CM for offences under the PCA elicited no response. YSR sought a mandamus to the Governor. The high court declined to entertain the PIL in view of the constitutional bar under article 361 that "the Governor cannot be made answerable to any court for his acts done in discharge of his constitutional duties."[149] In the second PIL, YSR sought a writ of quo warranto for removal of the CM and other ministers for violating the constitutional mandate by not holding elections to the nine municipalities around Hyderabad within the stipulated period. This time the high court explained its decision to dismiss the PIL on several grounds. The petitioners' party when in power had itself not taken any steps to hold elections. This fact and the timing of the filing of the PIL on the eve of elections with prior publicity, even when the issuance of notification for holding of the elections was imminent, could not be lost sight of while invoking the discretionary jurisdiction. Secondly, the State Election Commission was an independent authority which had to take a decision to hold elections. Nothing was shown to conclude that the CM had prevented it from holding the elections. Thirdly, the CM was holding office at the pleasure of the Governor. He could be removed either by a vote of no confidence on the floor of the legislative assembly or by invoking article 356 and in no other way. Finally, the writ petition was an attempt "to use the courts as a platform for taking political advantage at the hustings by playing the game of chess in courts. The courts cannot be permitted to be used as springboards for gaining political advantage at the hustings."[150]

The Patna High Court saw the protection given under article 361 as being personal to the Governor and not a bar to judicial review of the exercise of discretion by the Governor under Article 163 (2) of the Constitution.[151] Therefore, it negatived the preliminary objection to the maintainability of a PIL by a 'non-political institution' where the question was whether the Governor had the power and was right in asking Smt. Rabri Devi, who was invited to form a government, to prove her majority on the floor of the assembly within ten days. The court, however, upheld the action of the Governor as being consistent with the constitutional scheme which envisaged the collective responsibility of the council of ministers to the legislative assembly.[152]

The PIL by Tarak Singh, a councillor of the Calcutta Municipal Corporation, in the Calcutta High Court seeking cancellation of the allotment of plots in Salt Lake City made by and on behalf of the Chief Minister, Jyoti Basu, took a strange turn ending in its dismissal.[153] The petitioner was able to show that the Chief Minister himself did not have discretionary powers for making the allotments but had done so only pursuant to the orders of the Calcutta High Court in some earlier litigation in 1987. One allotment had been made in favour of the Chief Minister's brother-in-law Bimal Bose, a cancer patient, who in turn had bequeathed it to the Chief Minister's granddaughter. The petitioner furnished a list of allottees to buttress the contention that the allotments were explained by the closeness of the allottees to the Chief Minister. The government did not succeed in negating the locus of Tarak Singh on the ground that the PIL was politically motivated. The court was informed that while allotments made prior to June 1987, by lottery, could not be reopened since the CM had no discretionary power, the 276 allotments made thereafter constituted only 2.06 per cent of the total 13,339 plots. The allottees included judges, doctors, lawyers, chartered accountants, sportsmen, artists, journalists, political sufferers, bureaucrats on the verge of retirement, engineers and NRIs. The single judge of the high court agreed that the allotments made out of the discretionary quota were without reasons and that no reasonable person would have exercised discretion in that manner. However, since the petitioner had given up the prayer for quashing the allotments, no consequential relief could be given and the petition had to be dismissed.[154]

Change of governments very often brings about a series of fresh political appointments to various statutory and state controlled bodies. The issue in Dattaji Chirandas v. State of Gujarat[155] was the validity of the Chief Minister's advice to the Governor in regard to fresh nominations to the various posts, even before the ministers comprising the cabinet could be sworn in. The high court held that the Chief Minister was not deprived of his power to aid and advice the Governor till the council of ministers was sworn in. The pleasure doctrine obviated the need for formal orders of removal of the incumbents.

The Orissa High Court refused to entertain a plea that the Chief Minister should be restrained from advising the Governor to appoint certain named respondents as ministers.[156] The court thought it premature "to consider the propriety of advice of the Chief Minister which is yet to be known and accepted by the Governor for administering oath".[157]

The Kerala High Court repelled challenge to the appointment of a nominee to represent the Chief Minister, E.K. Nayanar, in his constituency Thalassery. Negativing the prayer that the Chief Minister having abdicated his essential constitutional function should demit office, the court said: "some amount of play in the joints will have to be conceded to the constitutional functionary while discharging his functions. His conduct in this regard is therefore not liable to called in question before this court. It might be a matter for the legislature and the electorate…".[158]

Businessman R. Venkateshwara Rao's PIL in the Andhra Pradesh High Court for a declaration that Sonia Gandhi, having acquired citizenship by naturalization, could not either contest for a seat in Parliament or hold the office of President or Prime Minister of India was dismissed. The challenge to the validity of section 5 (1) (c) of the Citizenship Act, 1955 which permitted this was also negatived on the ground that it was based on unassailable legislative policy.[159]

The question of the validity of bulk allotment of plots made by the Bangalore Development Authority to a co-operative society of legislators, which in turn made allotments to the individual legislators, without providing any guidelines or criterion came up for consideration in S. Vasudeva v. Govt. of Karnataka.[160] The court found that every one of the allotments made by the society were in violation of the relevant Act, rules and regulations. The court said: "The political executive cannot be permitted to…confer public largesse upon the privileged and influential at the cost and expense of the needy and deserving".[161] All permissions granted for alienation of the plots allotted to third parties were also found to be null and void. However, instead of quashing the allotments, the court directed that a committee be appointed to examine each case of illegal allotment and based on the report of the committee the authority would initiate the legal process for cancellation of allotment. The Allahabad High Court held the issue of free rail passes to former members of Parliament to be illegal. They were not a privileged group.[162] An ordinance promulgated by the Union of India validating the rail passes in order to overcome the effect of the judgment was also declared illegal by the same high court.[163] The Kerala High Court got the Union of India to formulate guidelines to govern the discretionary quota available to Lok Sabha members to recommend allotments of telephone and LPG connections.[164]

Each of these cases involved in some sense issues of power and accountability. They also were premised on the eagerness to ensure that those occupying high political offices were answerable to the law for their actions. Whatever the result, these attempts do generate publicity in the media and possible political mileage. Interestingly, not all these PIL cases have been an abuse of process of court. This explains the tacit acceptance by courts of the judiciary being another arena to adjudicate issues that have political ramifications.

VII. URBAN AFFAIRS

Health concerns

Issues of smoking in public places, administering of oral polio vaccine, holding of eye camps, sale of salt, compulsory wearing of helmets and conditions of hospitals featured in the health concerns brought to the courts in PIL.

The Kerala High Court in a PIL declared "Public smoking of tobacco in any form whether in the form of cigarettes, cigars, beedies or otherwise is illegal, unconstitutional and violative of Article 21 of the Constitution of India."[165] Terming it as a 'public nuisance' the court directed the state administration to promulgate an order under section 133 (a) Cr.PC prohibiting public smoking within one month of the judgment and the police to prosecute all persons found smoking in public places for the offence under section 268 IPC. It termed the countenancing by the state of the baneful consequences of smoking in public places as a negation of the citizens' "constitutional guarantee of a decent living."[166] The high court reached the above conclusions after extensively referring to scientific studies on the harmful effects of tobacco smoke. It felt that existing laws were sufficient to deal with the problem and the issue was only of enforcement. The judgment was completely silent on the submissions, if any, made by either the petitioner or the state.

The Karnataka High Court was informed through a PIL in 1998 that the joint organizers of an eye camp, the Lions Club of Chintamani, Bangalore and the Commonwealth Society for the Blind, New Delhi, had not followed the guidelines laid down by the government for holding such camps and that this had resulted in 72 persons losing vision in one eye and four persons in both. The court ordered interim compensation to be paid. The report submitted to the government by the commission of enquiry constituted by it confirmed the carelessness and negligence in the holding of the eye camp. Eleven years later the court disposed of the petitions and directed compensation to be paid on a scale fixed by the court.[167]

The debate over the government policy to encourage consumption of iodised salt spilt over to the court. K.C. Malhotra's PIL in the Madhya Pradesh High Court questioned the central government's notification amending the Prevention of Food Adulteration Act, 1954 and rules prohibiting sale of non-iodised common salt except for medicinal purposes. The high court in rejecting the PIL accepted the government's position, based on its studies, that sale of iodised salt would improve the health of the people. Acknowledging that iodised salt was far more expensive than common salt and would therefore be outside the reach of the vast majority of poor people the court said: "this is an economic problem for all but in order to do greater good for all citizens, this price will have to be paid. Simply because common salt will be cheaper than the iodised salt is no justification for the courts to declare that the aforesaid provision is invalid particularly when it has been made for the benefit of the public at large."[168]

The Allahabad High Court by rather short orders disposed of two PILs projecting public health issues. In the first, after receiving no reply to the petition for three weeks, the court simply granted the petitioner's prayer directing Union of India to "strictly follow its own as well as WHO guidelines for manufacture and procurement of oral polio vaccine and to adhere to internationally accepted standards and norms for polio eradication".[169] In the other, the complaint by an advocate as to the condition of government hospitals in the city of Allahabad led to the court constituting a committee with a senior advocate for the court as chairman and the representatives of the district administration as members to make investigations and submit a report.[170]

Section 129 of the Motor Vehicles Act, 1988 prescribing compulsory wearing of helmets by drivers of two-wheelers and pillion riders has provoked at least three PILs this year. The Kerala High Court by a common judgment disposed of two PILs – one demanding strict enforcement of the provision and the other questioning its constitutional validity – on the ground that it hurt religious sentiments of Jacobite Christians and Muslims. The court negatived the challenge explaining that the caps worn by the members of these two communities were not similar to turbans worn by the Sikhs, who were alone exempt from the provision. Consequently, there was no violation of article 14.[171] The Punjab and Haryana High Court also rejected a PIL by a lady lawyer

questioning the challenging of pillion riders for not wearing helmets, despite the Supreme Court staying the order of the High Court, in an earlier petition, directing that both drivers and pillion riders of two-wheelers shall wear helmets. The high court explained that the stay granted by the Supreme Court did not put an end to section 129, for the violation of which the challan was issued.[172]

Town planning

The anxiety to promote tourism as an industry has led state governments to devise special rules permitting privatisation of the task of development of tourist sites at hill stations. This could prove to be detrimental to not only the planned development of such ecologically sensitive areas but also overlook the protection that exists in law to lands owned by tribals. These issues figured in a PIL brought before the Bombay High Court by the BEAG. Sahara India Housing Ltd. ('Sahara') obtained power of attorney from 69 purchasers of 3376 acres of land from eight villages of Malshi Taluka which fell within the Pune Metropolitan Region permitting it to develop the land. Sahara's target was 5000 acres. In 1993 Sahara applied to the Collector of Pune for permission to convert the lands to non-agricultural use for construction of farmhouses. The permission was refused. After the Maharashtra Tourism Development Corporation (MTDC) announced investment opportunities for tourism in the state, Sahara on 3.3.1995 applied to MTDC for grant of permission for its project for a like city involving the construction of a holiday resort on 413 acres and creation of two water bodies and a helipad. The MTDC granted the permission on 9.3.1995. Without waiting for the environmental clearance or permission regarding conversion of land to non-agricultural use, Sahara started construction of various structures from March, 1995 onwards.

The PIL challenged the Special Development Control (Hill Station) Regulations issued by a notification dated 26.11.1996 under section 20 (4) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), on the ground that Sahara was being shown a special favour by the government and that it was delegating its essential function of planning the development of hill stations to private builders and developers. There were violations of the forest laws, ceiling laws, the MRTP Act, the Land Revenue Code and the Bombay Tenancy Act. Although there was a prohibition on sale of tribal lands to non-tribals, it was alleged that many tribals had been forced to sell lands for Sahara's project. The other challenge was to the letter of intent dated 7.1.1997 issued by the government to Sahara in respect of its project. Although the court negatived the challenge to the notification and letter of intent the grounds of excessive delegation, mala fides and as being harmful to the environment, it accepted the contention that Sahara was merely a power of attorney holder of individual purchasers of land and the relevant statutes i.e., the Ceiling Act, the Bombay Tenancy Act or MRTP Act did not recognise a developer or builder who was not himself an owner. The court concluded: "Sahara started constructions since March, 1995 without any permission but with the ardent belief of its regularisation, this clearly conveys that it expected governmental blessing and hence the government has undertaken the exercise of issuing the letter of intent to suit the mission of Sahara."[173] The letter of intent was quashed and set aside. The government was directed to carry out a probe regarding the land deals of Sahara. The tribals were permitted to approach the competent authority for establishing that their lands had been taken by force and without any payment.

The Allahabad High Court accepted a plea challenging the carving out of a new revenue district in the State of U.P. by the name of Sant Kabir Nagar. With the government failing to file its reply within the stipulated time, the court presumed the averments in the petition to be correct and directed the government to reconsider the matter and "decide whether there was any good administrative and financial ground to issue the notification".[174]

Krishan Banon's PIL in the Himachal Pradesh High Court complaining that the authorities were permitting haphazard construction of hotels and commercial establishments was dismissed eight years after it was filed. The petitioner's plea that there were violations of the building guidelines issued by the municipal authorities from time to time was declined on the ground that since these were not statutory guidelines they were not justiciable. The complaint regarding the fudging of records relating to the building plan of a particular hotel was a disputed question of fact which would not be examined by the high court in a writ petition under article 226.[175] However, hotel owners in Sikkim were able to get the high court, in a PIL filed by them, to direct the

state government to take appropriate action to ensure that structural improvements be made to two dilapidated buildings housing hotels in Gangtok.[176]

City concerns

PILs were also filed for removal of encroachments,[177] stoppage of public nuisance as a result of conduct of public meetings[178] or holding of bundh,[179] water supply to particular localities,[180] keeping localities clean,[181] providing access to public parks,[182] prohibiting use of neon lights in cars,[183] minimising accidents on roads through better traffic control,[184] strict enforcement of reservation of seats for women in buses[185] and preventing use of cell phones by inmates of the prisons.[186]

VIII. CONCLUDING REMARKS

Concluding mandamus

The monitoring of PIL orders is an integral facet of the court exercising its jurisdiction of 'continuing mandamus'.[187] This not only restores the hope that orders made in PIL are not a one-time exercise but that the courts are serious about implementation. In D.K. Basu v. State of West Bengal,[188] the court had given a large number of directions for compliance by the state governments. In the year under review the case was heard by the court presided over by the Chief Justice of India who had delivered the main judgment, on five different occasions between January and October 1999. The court dealt with the aspect of implementation state-wise by calling for compliance reports and closely examining the extent of compliance.[189] Significant progress was achieved as a result of the court hearing the case at periodic intervals. Likewise, the Forest Matters,[190] the PIL concerning automobile pollution in Delhi,[191] the preparation of a revised prisoners manual for Delhi,[192] the preparation of a revised prisoners manual for Delhi,[193] the implementation of the Dowry Prohibition Act, 1961[194] and the matter concerning the scam arising out of allotment of petroleum gas outlets by a private party[195] were listed at regular intervals before the same bench that made the earlier orders for the purposes of monitoring their implementation. On the other hand, monitoring of orders made by the high courts in PIL was not readily discernible.[196] The choice of cases for monitoring has depended to a large extent on the continuation of the same set of judges who deal with the matter in the first instance.

Issues of procedure

The decisions of the high courts reveal a predominant engagement with urban issues like provision of civic amenities, town planning, public accountability and public health. Issues of geographical proximity to the seat of the high court seem to more readily catch the attention of the court. It is a matter of some concern that issues of human rights violations are appearing less as PIL issues before the courts. The creation of the human rights commissions at the central and state levels could explain this only in part.[197] The fair regularity with which disputes between citizens and statutory civic bodies appear in the high courts has prompted the Delhi High Court to direct that there shall be permanent Lok Adalats constituted under the Legal Services Authorities Act, 1987 to decide the disputes involving the Delhi Development Authority, the Municipal Corporation of Delhi, the New Delhi Municipal Committee and the Delhi Administration. This is ostensibly to ease the pressure on

the writ jurisdiction of the high court.[198]

The lack of a procedure governing the entertaining of PIL cases suo motu by judges has been a matter for concern in the Karnataka High Court. Pursuant to orders of the Chief Justice a notification was issued directing that PIL writ petitions would be listed before a division bench "dealing with the particular subject as per sitting list".[199] Later by another order it was stipulated that "the Hon'ble Judges shall not initiate or entertain applications, petitions, complaints, or grievances – suo motu or otherwise – except when specifically assigned".[200] These orders were challenged by the advocates practising in the high court on the ground that they were opposed to the Karnataka High Court Act, 1962 and the rules and that they tantamounted to the Chief Justice usurping the powers of other judges. Negativing these contentions, the court held that on a reading of the Act and rules the position was that "the Chief Justice is the sole supreme authority for constitution of Benches and for distribution of judicial work among the Judges of the High Court."[201] Further, with a view to discourage professional litigants abusing the process of the court, "treating PIL as a special case keeping in view the vitality of its nature, posting before the Division Bench cannot said to be arbitrary or unreasonable".[202] Meanwhile, other high courts and the Supreme Court continued to entertain PILs suo motu.[203]

The original purpose

The issues that promoted the ascent of PIL as a tool for ensuring access to justice to the underprivileged sections of society are no longer the ones that occupy the space that PIL provides in courts. The reminder by the Supreme Court in 1999 that "the real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights"[204] was perhaps necessary. The expectation that legal aid committees would take up public causes as social justice litigation in courts has also not materialised.[205]

Yet, there remains the hope that PIL will revert to its original purpose.

Endnotes

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[1] See generally *S.P. Gupta v. Union of India*, 1981 Supp SCC 87; S. Muralidhar, 'Public Interest Litigation' XXXI *ASIL* 395 (1995).

[2] Among the early cases was *Sebastian Hongray v. Union of India*, (1984) 1 SCC 339. The jurisprudential basis has been explicated in *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 and more recently in *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

[3] The principle of enterprise liability [*M.C. Mehta v. Union of India* (1987) 1 SCC 395], the polluter pays principle [*Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212] and the precautionary principle [*Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647], which form part of environmental jurisprudence, were all developed entirely through PIL cases.

[4] (1996) 6 SCC 530 [Coram: Kuldip Singh and Faizan Uddin, JJ.].

[5] *Id.* at 556. Also see S. Muralidhar, 'Public Interest Litigation', XXXII *ASIL* 369 at 388 (1996).

[6] *Id.* at 553.

[7] *Id.* at 555.

[8] *Id.* at 556.

[9] *Id.* at 555.

[10] *Id.* at 556-557.

[11] *Common Cause v. Union of India*, (1996) 6 SCC 593 [Coram: Kuldip Singh and Faizan Uddin, JJ.].

[12] (1972) 1 All ER 801.

[13] *Supra* note 11 at 598.

[14] *Shiv Sagar Tiwari v. Union of India*, (1996) 6 SCC 558. See also S. Muralidhar, *supra* note 5 at 389.

[15] *Id.* at 564. In the subsequent judgment, *Shiv Sagar Tiwari v. Union of India*, (1996) 6 SCC 599, the court directed Smt. Kaul to pay Rs.60 lakhs as exemplary damages to the public exchequer. A CBI investigation was also ordered.

[16] (1997) 1 SCC 388 [Coram: Kuldip Singh and S. Saghir Ahmad, JJ.]. The court here followed the decision of an American court in *Illinois Central Rail Road Company v. Illinois* 146 US 387. See also S. Muralidhar, *supra* note 5 at 384.

[17] *Id.* at 413.

[18] The court noted the articulation of the principle in the *Illinois* case that "a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties." (*Id.* at 408).

[19] (1999) 6 SCC 667 [Coram: S. Saghir Ahmad, K. Venkataswami and S. Rajendra Babu JJ.]. Sheila Kaul and Kamal Nath also filed separate review petitions which were admitted and pending as of 1999.

[20] *Id.* at 735. In insisting that "Common Cause cannot be said to be a plaintiff nor can it claim to have

suffered any damages or loss on account of the conduct of the petitioner" (*Id.* at 744) the court was effectively turning the doctrine of locus standi in PIL cases on its head. Also, no reference was made to the judgment in *Shiv Sagar Tiwari v. Union of India supra* note 14 where this very point has been answered.

[21] *Id.* at 744. The proposition that a relief under article 32 can only be claimed against the state and not by it on behalf of the citizens appears to be doubtful. For e.g., see *State of West Bengal v. Union of India*, AIR 1996 Cal 181 where the *locus* of the state to file a PIL was recognised. Also see *Attorney General of India v. Lachma Devi*, AIR 1986 SC 467 which was a PIL filed to stop the execution of the respondent by public hanging consequent upon the orders of the Rajasthan High Court.

[22] *Id.* at 737. Again, no reference was made to the judgment in *Shiv Sagar Tiwari, supra* note 14 which explains the rationale behind the adaptation of the tort of misfeasance of public office into public law adjudication.

[23] *Id.* at 746. The court ruled out the offence of criminal breach of trust when it said: "the petitioner does not, on becoming the Minister of State for Petroleum and Natural Gas, assume the role of a 'trustee' in the real sense nor does a 'trust' come into existence in respect of the government properties". (*Id.* at 748). Interestingly, the court seems to have missed the point that the original judgment did not even indirectly refer to the public trust doctrine. It saw Satish Sharma as a trustee of public property, who had betrayed the trust reposed in him.

[24] *Id.* at 751.

[25] (1999) 6 SCC 464 [Coram: S.B. Majmudar and D.P. Wadhwa, JJ.]. It is not clear if one of the petitions in this case, filed by one Amrit Puri, was a PIL or not (see *id.* at 503 and the arguments of his counsel at 525).

[26] *Id.* at 525.

[27] *Id.* at 518.

[28] *Id.* at 31.

[29] *Supra* note 14.

[30] *Deshpriya v. Municipal Council, Nuwara Eliya*, (by the Supreme Court of Sri Lanka) (1996) 1 CHRD 115, *Tynes v. Barr*, (Supreme Court of Bahamas) (1996) 1 CHRD 117 and *Samulls v. Attorney General* (Supreme Court of Jamaica) (1996) 1 CHRD 120. The review court in *Common Cause* did not refer to these cases as well.

[31] *Id.* at 563-64.

[32] *Supra* note 2.

[33] *Punjab Civil and Consumer Welfare Front v. Union Territory of Chandigarh*, AIR 1999 P&H 32.

[34] *All India Lawyers Union v. Union of India*, AIR 1999 Del. 120.

[35] *P.A. Kulkarni v. State of Karnataka*, AIR 1999 Kar 284. However, in *Sudha Gupta v. State of M.P.*, 1999 (2) MPLJ 259 a full bench of the Madhya Pradesh High Court refused a plea for compensation by the wife of deceased undertrial prisoner who had died due to medical negligence at the government hospital where he was admitted for treatment. The petitioner also brought to the notice of the court instances of other similar death of prisoners. The court felt that the facts pleaded were inadequate and preferred to rely upon a magisterial enquiry which had found that the deaths were not due to negligence.

[36] *Jan Sangharsh Manch v. State of Gujarat*, AIR 1999 Guj. 286.

[37] *A.K. Singh v. Uttarakhand Jan Morcha*, (1999) 4 SCC 476.

[38] *Id.* at 482-83. The high court had also held that no sanction was required for prosecution of the government officials and that special courts be established for trying the offences.

[39] *Id.* at 483. The Supreme Court made it clear that the amounts of compensation need not be paid although if some amounts had already been disbursed, they would not be recovered. The high court's directions that no sanction would be required for prosecution of government officials and for setting up special courts were also set aside.

[40] *Supra* note 19 at 745.

[41] B.N. Kirpal, J., Preface to *Supreme But Not Infallible: Essays in Honour of the Supreme Court of India*, Oxford, 2000, viii. He recalled Justice Robert Jackson's quote in *Brown v. Allen*, 344 US 443: "We are not final because we are infallible, we are infallible only because we are final."

[42] For a cataloguing of certain past instances see the order in *A.R. Antulay v. R.S. Nayak*, 1986 (2) SCALE 703.

[43] See for e.g., *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584.

[44] 1963 Supp (1) SCR 885.

[45] See *Supreme Court Bar Association v. Union of India*, (1998) 5 SCC 409. See also S. Muralidhar, 'Public Interest Litigation', XXXIII-IV *ASIL* 525 at 533 (1997-98).

[46] *Supra* note 19 at 752.

[47] For a narrative on these orders see S. Muralidhar, 'Public Interest Litigation', XXXII *ASIL* 369 at 380-81 (1996).

[48] *M/s Birla Textiles v. Union of India* (1999) 7 SCALE 148 [Coram: S. Saghir Ahmad and M. Jagannadha Rao, JJ.].

[49] The main closure order was *M.C. Mehta v. Union of India*, (1996) 4 SCC 750 [Coram: Kuldip Singh and Faizan Uddin, JJ.] and the orders regarding implementation concerning Birla Textiles are reported in (1999) 2 SCC 91 and (1999) 2 LLN 94 [Coram: S. Saghir Ahmad and M. Jagannadha Rao, JJ.]. The court in the latter order found that the industry "proceeded on a total misconception of the order of this court dated 8.7.1996 and adopted a procedure which ran quite contrary to the scheme which was envisaged by this court for the benefit of workmen" [(1999) 2 SCC 91 at 101]. Despite thwarting implementation of the order for three years, the industry was not visited with any consequences.

[50] Birla Textiles cited an earlier instance of reference of the question of maintainability of a writ petition challenging the correctness of a judgment of the Supreme Court by a party to that very judgment, after a review petition by that party was dismissed: *Rupa Hurra v. Ashok Hurra*, (1999) 2 SCC 103.

[51] See *M.C. Mehta v. Union of India*, (1999) 2 SCC 91 at 95 and 101.

[52] *M.C. Mehta v. Union of India*, 1999 (6) SCALE 345 and 1999 (7) SCALE 614.

[53] *M.C. Mehta v. Union of India*, 1999 (7) SCALE 176.

[54] *M.C. Mehta v. Union of India*, *supra* note 52

[55] *M.C. Mehta v. Union of India*, *supra* note 53.

[56] *T.N. Godavarman Tirumulkpad v. Union of India*, (1997) 2 SCC 267; (1997) 3 SCC 312.

[57] (1999) 1 SCC 271.

[58] *Id.* at 272.

[59] *Ibid.* A.S. Anand, J. (as he then was), who presided over the bench that made this order was the author of the judgment allowing the writ petition under article 32 questioning the correctness of the judgment of the Supreme Court in *Vinay Chandra Misra, Re*, [(1995) 2 SCC 584]: *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409. The prayer in the writ petition *Sabia Khan* was also in similar terms as the prayer in the writ petition in *Supreme Court Bar Association* – that the petitioner should be granted the relief sought for notwithstanding the judgment under challenge.

[60] *Ibid.*

[61] 1996 (1) SCALE SP 22 [Coram: Kuldip Singh and S. Saghir Ahmad, JJ.] and 1996 (8) SCALE SP 22 [Coram: Kuldip Singh, Faizan Uddin and K. Venkataswami, JJ.].

[62] (1998) 5 SCC 610 [Coram: M.M. Punchhi, CJI, S.C. Agrawal and S. Saghir Ahmad, JJ.].

[63] *Id.* at 611.

[64] *Ibid.*

[65] *M.C. Mehta v. Union of India, (Re: Pusa Service Station*) (1998) 5 SCC 611 [Coram: same as in note 62 *supra*]. Against the original order of 8.10.1996, the review petition of 1998 was allowed on 4.5.1998.

[66] (1999) 6 SCC 237.

[67] (1995) 3 SCC 42.

[68] *Id.* at 70.

[69] 1999 (4) SCALE 10. The court now said: "we are, prima facie, disinclined to accept the correctness of the broad observations [in para 25 of the earlier judgment]…" (*Id.* at 11).

[70] (1999) 8 SCC 737.

[71] (1999) 6 SCC 552.

[72] *Peela Pothi Naidu v. State of Andhra Pradesh*, 1999 (4) ALT 161. This was primarily on the ground that the notification had been issued without application of mind by the government as required by s.3(1) of the Commissions of Inquiry Act, 1951. Apparently, the fact that the government was complying with a *mandamus* issued by the high court was to no avail.

[73] The court noted that already Rs.80 lakhs had been spent – Rs.65,90,000/- for the Commission and the rest for other expenditure like TA and DA.

[74] (1999) 3 BLJR 1820.

[75] *Arun Kumar Mukherjee v. State of Bihar*, (C.W.J.C. 2290/90).

[76] *Supra* note 74 at 1839.

[77] *Ibid*. The individual officers were saddled with costs. The petitioners were directed to seek their remedy for damages in the civil courts. See also *Parmottam Prasad Singh v. State of Bihar*, (1999) 1 BLJR 716 for a similar instance of illegal demolition by the authorities in purported implementation of the court's general order in a PIL. The action of the Calcutta Port Trust authorities in seeking to demolish a *namaz ghar* and a Shiva temple as a part of the riverfront beautification drive consequent upon orders of the 'Green Bench' of the Calcutta High Court was challenged in a PIL. In *Idris Ali v. State of West Bengal*, AIR 1999 Cal 337, the High Court held that the *namaz ghar* was only a temporary structure and that there was no public interest involved in requiring the authorities not to demolish it. The Shiva idol was agreed to be shifted

to a different place even during the pendency of the PIL.

[78] See for e.g., the instance of the closure of the Idgah slaughter house in Delhi: *Buffalo Traders Welfare Association v. Maneka Gandhi*, 1994 Supp (3) SCC 448. See also S. Muralidhar, 'Public Interest Litigation', XXX *ASIL* 429 at 438 (1994).

[79] See *Gopi Aqua Farms v. Union of India*, (1997) 6 SCC 577 seeking to reopen the decision in *S.Jagannath v. Union of India*, (1997) 2 SCC 87. It is another matter that the judgment never really got implemented.

[80] Writ Petition No.305/95 (*Bombay Environmental Action Group v. A.R. Bharati).*

[81] Unreported order dated 7.5.1997 in Writ Petition No.305 of 1995 [*Bombay Environmental Action Group v. A.R. Bharati*].

[82] *Id.* at para (r).

[83] *Id.* at para (z).

[84] Order dated 17.7.1999 in W.P.No.305 of 1995 (*BEAG v. A.R. Bharati).*

[85] Unreported order dated 13.3.2000 of the Bombay High Court in W.P.305/95 (*BEAG v. A.R. Bharati).*

[86] *Id.* at para 5.

[87] *Id.* at para 18. The slum dwellers found that the alternate site at Kalyan besides being inaccessible and under-provided was unaffordable for many of them. They had little choice, for if they did not exercise the option to shift, their present dwelling would be demolished anyway.

[88] S.L.P.(C) No. Nil/2000 in the Supreme Court [*Nivara Hakk Welfare Centre v. Bombay Environmental Action Group*]. The adjournment of the application to June, 2000 ensured that a majority of the demolitions took place without hindrance. The fact that this was the peak monsoon period in Mumbai made the situation even more poignant for the slum dwellers. The SLP challenging the orders of the high court dated 17.7.1999 and 13.3.2000 was dismissed *in limine*.

[89] See generally S. Muralidhar, *supra* note 45 at 528-29 and 562.

[90] (1999) 2 SCC 718. For a detailed analysis see P. Leelakrishnan, 'Environmental Law', XXXV *ASIL* 295.

[91] *Id.* at 730.

[92] *Id.* at 740-41.

[93] The authority would act as an extended arm of the court as did the National Human Rights Commission when it was asked to determine compensation payable to the dependants of victims of the mass cremation by the Punjab police of unidentified persons during the trouble-torn years in Punjab: *Paramjit Kaur v. State of Punjab*, (1999) 2 SCC 131.

[94] *Fazalur Rehman v. State of U.P.,* (1998) 7 SCC 453, order dated 14.10.1998

[95] *Fazalur Rehman v. State of U.P.,* (1999) 7 SCC 683 at 684.

[96] See S. Muralidhar, 'Public Interest Litigation', *supra* note 45 at 547.

[97] *Ranganathan v. Union of India*, 1999 (3) SCALE 1.

[98] *Rudra Jyoti Bhattacharjee v. Union of India*, AIR 1999 Cal 9 at 14. The central government has since appointed M.K. Mukherjee, J a former judge of the Supreme Court as the commission of inquiry.

[99] *Id.* at 15.

[100] Unreported judgment dated 3.2.1999 of the division bench of the Calcutta High Court in W.P.17141 (W) of 1998 [*Sujato Bhadra v. State of West Bengal]*.

[101] *S.C. Chowdhury v. Secertary, Chakraborty Commission of Inquiry*, 84 CWN 583.

[102] *Supra* note 100, para 3. The SLP filed against this judgment was dismissed by the Supreme Court.

[103] *Anweshi Women's Counselling Centre v. State of Kerala*, 1999 Cri LJ 787.

[104] *Id.* at 789. While dismissing the petition, the court directed the investigating agency to proceed with sincerity of purpose uninfluenced by external dictation.

[105] *Niyamavedi v. CBI*, 1999 (1) KLT 560.

[106] *R.D. Upadhyay v. State of A.P.*, 1999 (1) SCALE 139; 1999 (3) SCALE 9.

[107] *R.D. Upadhyay v. State of A.P.,* 1999 (7) SCALE 618 and 619.

[108] *Id.* at 620. Perhaps a case of history repeating itself, at regular intervals: See *Veena Sethi v State of Bihar*, (1982) 2 SCC 583 and *Sheela Barse v. Union of India*, (1993) 4 SCC 204.

[109] For e.g., see *S.P. Sampath Kumar v. Union of India*, (1987) 1 SCC 124 and more recently *Visaka v. State of Rajasthan*, (1997) 6 SCC 241.

[110] (1999) 6 SCC 591.

[111] *Id.* at 592-93.

[112] *Id.* at 593.

[113] *Watchdogs International v. Union of India*, 1999 (5) SCALE 113, 1999 (7) SCALE 611.

[114] In *Re: E&I of Dowry Prohibition Act, 1961*, 1999 (3) SCALE 120; 1999 (5) SCALE 363 and 199 (7) SCALE 149.

[115] (1999) 4 SCC 727.

[116] *Id.* at 740.

[117] *Ibid.*

[118] *Id.* at 750. The court refused to interfere.

[119] *A.P. Dalit Mahasabha v. Govt. of A.P.*, AIR 1999 AP 208 at 222. See also *Dr. K.C. Malhotra v. Union of India, (infra* note 168). However, the Gauhati High Court felt no such constraint in accepting the plea that 'Bishnupriya Manipuris' being different from Manipuris, the notification granting reservation to the former in government employment had to be quashed: *K. Kumardhan Singh v. Union of India*, (1999) 2 Gau LR 501.

[120] *A.P. Dalit Mahasabha v. Govt. of A.P.*, AIR 1999 A.P. 452 at 464. See also *Ravindra Kumar v. State of U.P.*, 1999 All LJ 1362 where the court refused to entertain a plea that teachers' strike be declared illegal and striking teachers be dismissed from service. To the court this was a matter of policy and beyond judicial review.

[121] *Ernakulam North Development Coordination Council v. Union of India* AIR 1999 Ker 131.

[122] *Laxmi Kachhawaha v. State of Rajasthan*, RLW 1999 (2) Raj 864.

[123] *Kunj Behari v. Smt. Suman Donde*, 77 (1999) DLT 391.

[124] *Navin Chandra Gupta v. Union of India*, 1999 (36) ALR 328.

[125] *Om Prakash Tiwari v. Govt. of A.P.*, (1999) 4 ALT 327.

[126] See *Citizens Council, Jamshedpur v. State of Bihar*, AIR 1999 Pat 1; *All India National Sikh Association v. Union of India*, 1999 (77) DLT 491 and *Sudha Gupta v. State of M.P., supra* note 35.

[127] *Lawyers' Association v. State of Bihar*, AIR 1999 Pat 107.

[128] *Ashok C Vora v. State of Gujarat*, AIR 1999 Guj 43.

[129] *S. Shyamaprasad Rao v. Union Govt. of India*, AIR 1999 AP 38.

[130] *Mahaveer Prasad v. State of Rajasthan*, AIR 1999 Raj 67.

[131] *Deepak Ganpatrao Salunke v. Governor of Maharashtra*, (1999) 1 Mh LJ 940. Also see *T. Asaf Ali v. E.K. Nayanar, infra* note 158.

[132] *Ali Jawad v. I.F.B. Enterprises Ltd.*., 1999 (3) Mh LJ 515.

[133] *Bhau Shankarrao Suradkar v. State of Maharashtra*, 1999 (2) Mh LJ 17.

[134] *K.P. Leela v. Secy, Govt. of A.P.,* 1999 (3) ALT 562.

[135] *Sudheer Srivastava v. Election Commissioner*, 1999 (6) ALT 140.

[136] *Sheikh Nawshad v. State of M.P.*, 1999 (1) MPLJ (NOC) 15.

[137] *B.K. Dubey v. Lokayukta*, 1999 (1) MPLJ 711.

[138] *Narendra Bajpayi v. State of M.P.*, 1999 (2) MPLJ 684. Many of the PILs listed in this section were dismissed with costs.

[139] For e.g., see *Kazi Lhendup Dorji v. Central Bureau of Investigation*, 1994 Supp (2) SCC 116.

[140] *J. Jayalalitha v. Government of Tamil Nadu*, (1999) 1 SCC 53 at 56.

[141] *Ibid.*

[142] *Id.* at 55.

[143] *Ibid.*

[144] *Id.* at 56.

[145] (1999) 5 SCC 138.

[146] *Id.* at 147.

[147] *Id.* at 146.

[148] The Supreme Court dismissed all the appeals by Jayalalitha and her colleagues thus paving the way for the uninterrupted trial of all corruption cases by the special judges already designated for the purpose.

[149] *Y.S. Rajasekhara Reddy v. His Excellency, Governor of Andhra Pradesh*, (1999) 6 ALT 381 at 392. The court went on to hold that there was "no order passed by the Governor which can be impugned… the relief sought is a direction to the Governor to decide and act in a particular way, which cannot be comprehended in view of the specific bar under Article 361." (*Id.* at 396).

[150] *Y.S. Rajasekara Reddy v. N. Chandrababu Naidu*, (1999) 6 ALT 406 at para 37. B.K. Chandrashekar in Karnataka was able to persuade the High Court to issue a mandamus to the State Election

Commission to hold elections to the grama panchayats as mandated by Article 243-E of the Constitution: *Prof. B.K. Chandrashekar v. State of Karnataka*, AIR 1999 Kar 461.

[151] *Sapru Jayakar Motilal C.R. Das v. Union of India*, AIR 1999 Pat 221.

[152] The court explained that the rule of *causus omissus* – that because the Constitution made no mention of either a motion of confidence or of no confidence, the Governor could not require the Chief Minister to prove her strength on the floor of the house – if applied, would defeat the constitutional scheme which envisaged a parliamentary form of government with a cabinet system.

[153] *Tarak Singh v. Jyoti Basu*, AIR 1999 Cal 354. The locus of the petitioner was accepted. For another instance of a PIL by a municipal councillor see, *Md. Firoj Ali v. State of West Bengal*, AIR 1999 Cal 260.

[154] However, the Supreme Court directed notice to be issued in Tarak Singh's special leave petition: *Tarak Singh v. Jyoti Bas*u, 1999 (4) SCALE 10.

[155] AIR 1999 Guj 48.

[156] *Kanhu Charan Mishra v. Chief Minister of Orissa*, AIR 1999 Ori 214. The precise apprehension was "If the persons having tainted images and criminal background will be recommended to be Ministers of the State it will be a sad day for the Governor to accept such advice and this court to remain mute observer". (*Id.* at 215)

[157] *Id.* at 216. It was left open to the petitioner to renew his challenge if any erroneous advice was accepted or acted upon.

[158] *T. Asafali v. E.K. Nayanar*, AIR 1999 Ker 160 at 161. Terming the PIL as based on a flimsy cause of action and therefore an abuse of process of court, the court dismissed it with costs of Rs.1,500/- to the first respondent.

[159] *R. Venkateshwara Rao v. Union of India*, AIR 1999 AP 328.

[160] AIR 1999 Kar 74.

[161] *Id.* at 98.

[162] *Squadron Leader H.S. Kulshreshtha v. Union of India*, 1999 (35) ALR 146.

[163] *Squadron Leader H.S. Kulshreshtha v. Union of India*, 1999 (35) ALR 626.

[164] *Varghese George v. Union of India*, 1999 (1) KLT 597.

[165] *K. Ramakrishnan v. State of Kerala*, AIR 1999 Ker 385 at 398. The high court clarified that public places would include roads, educational institutions, hospitals, shops, restaurants, bars, factories, cinema halls, parks, bus stations, railway stations, trains, compartments and other public transport vehicles.

[166] *Ibid.*

[167] *Pushpaleela v. State of Karnataka*, AIR 1999 Kar 119. Of the 72 victims, 27 died during the pendency of the petitions.

[168] *Dr. K.C. Malhotra v. Union of India*, AIR 1999 MP 96 at 100. The court did not deal with the contention that this was nothing but a device to benefit multinational companies to control this industry as well.

[169] *Sahil Society for Welfare of the Aged Poor and Homeless v. Union of India*, AIR 1999 All 87.

[170] *S.K. Garg v. State of U.P.*, 1999 (1) 35 ALR 362.

[171] *Sathjith v. State of Kerala*, 1999 (2) KLT 855. The court directed strict implementation of s.129. See also *Newspaper, Dainik Bhaskar v. State of Rajasthan*, RLW (1999) 2 Raj 930 where the high court directed that disciplinary proceedings be taken against the policemen photographed riding a two wheeler.

[172] *Navinder Jeet v. Chandigarh Administration*, AIR 1999 P&H 112.

[173] *Bombay Environmental Action Group v. State of Maharashtra*, 1999 (2) Mh LJ 747 at 778.

[174] *Ram Milan Shukla v. State of U.P.*, 1999 (35) ALR 364.

[175] *Krishan Banon v. State of Himachal Pradesh*, AIR 1999 HP 87.

[176] *Gulshan Rai v. State of Sikkim*, AIR 1999 Sikkim 7.

[177] *Jyoti Venkataramiah v. State of A.P.*, 1999 (3) ALT 657; *Francis Thachil v. Angamaly Municipality*, 1999 (1) KLT 759.

[178] *New Road Bros. v. Commissioner of Police*, 1999 (2) KLT 59.

[179] *Ranchi Bar Association v. State of Bihar*, AIR 1999 Pat 169. The Ranchi Bench of the Patna High Court followed the decision of the Kerala High Court in *Bharat Kumar K Palicha v. State of Kerala*, AIR 1997 Ker 291 (FB) which was approved by the Supreme Court in *Communist Party of India (Marxist) v. Bharat Kumar*, (1998) 1 SCC 201 and directed the state administration not to allow illegal *bundh*, rally etc. The court clarified that this would not apply to strikes and *hartal*.

[180] *S.K. Garg v. State of U.P.*, AIR 1999 All 41; *In Re: Matter relating to Restoration of Water Supply to Chitrakoot Dham*, 1999 (36) ALR 138.

[181] *Vinod Chandra Varma v. State of U.P.*, AIR 1999 All 108.

[182] *Nature Park Walkers v. State of A.P.*, 1999 (2) ALT 604.

[183] *Ashwin Jajal v. Municipal Corporation of Greater Bombay*, AIR 1999 Bom 35.

[184] *Suo Motu v. Secretary, Home Dept.*, AIR 1999 Guj 326. Of the two cases decided one petition was by Lok Adhikar Manch. The other had its origins in the order passed suo motu by a Single Judge on the basis of a press report.

[185] *Subhashini K. Reddy v. Bangalore Metropolitan Transport Corpn.*, AIR 1999 Kant 58.

[186] *Young Lawyers Association v. State of U.P.* 1999 (35) ALR 641.

[187] The term was used to explain the exercise of making a series of interlocutory orders in *Vineet Narain v. Union of India*, (1998) 1 SCC 226 at 243.

[188] *Supra* note 2.

[189] *D.K. Basu v. State of West Bengal*, 1999 (1) SCALE 465 (29.1.1999); 1999 (4) SCALE 475 (23.7.1999); 1999 (5) SCALE 426 (20.8.1999); 1999 (7) SCALE 222 (17.9.1999) and 614 (10.12.1999).

[190] *T.N. Godavarman Tirumulkpad v. Union of India*, 1999 (1) SCALE 466, 467; 1999 (4) SCALE 12; 1999 (5) SCALE 187, 189, 422, 423.

[191] *M.C. Mehta v. Union of India*, 1999 (3) SCALE 9, 166, 501. For the monitoring of the directions in the matter concerning disposal of solid wastes see *Almitra H. Patel v. Union of India*, 1999 (7) SCALE 376.

[192] *Wasim Ahmed Saeed v. Union of India*, 1999 (1) SCALE 683, 685; 1999 (5) SCALE 427.

[193] *Watchdogs Intl. v. Union of India*, 1999 (5) SCALE 113; 1999 (7) SCALE 611.

[194] *In Re. E & I of Dowry Prohibition Act, 1961 v. Union of India*, 1999 (3) SCALE 120; 199 (5) SCALE 363 and 1999 (7) SCALE 149.

[195] *Jagriti Upbhogta Kalyan Parishad v. Union of India*, 1999 (1) SCALE 464; for other orders see 1999 (1) SCALE 684 and 1999 (3) SCALE 10 & 745.

[196] A stray instance is the case of *Akhil Bharatiya Manav Kalyan Samiti v. State of U.P*., 1999 (35) ALR 359 on the issue of banning of single digit lotteries where the court reiterated and directed the implementation of all its earlier orders.

[197] See generally, Usha Ramanathan, 'Tort Law', XXXIII-IV *ASIL* 595 at 640-41 (1997-98).

[198] *Abdul Hassan v. Delhi Vidyut Board*, AIR 1999 Del 88. This petition sought restoration of electricity which had been disconnected for non-payment of bills to the tune of Rs.7 lakhs. The court decided to take up the issue of constituting permanent *Lok Adalats* and the National Legal Services Authority, which supported the idea, was then added as a *co-petitioner.*

[199] *A.V. Amarnathan v. Registrar* AIR 1999 Kant 404 at 406.

[200] *Id.* at 405-06. Further, no cases were to be presented in the residences of the judge without the specific orders of the Chief Justice.

[201] *Id.* at 409.

[202] *Id.* at 415. Mere denial of a further appeal in the high court was held not a denial of judicial review.

[203] For e.g., *Suo Motu In Re: Preservation of Antiquities involved in Criminal Trials,* AIR 1999 Ori 53 and *In Re: News Item "Power Crisis Paralyses AIIMS"*, 1999 (4) SCALE 303.

[204] *Malik Bros. v. Narendra Dhadhich, supra* note 71 at 555.

[205] Under s.4 (d) of the Legal Services Authorities Act, 1987, the National Legal Services Authority is expected to "take necessary steps by way of social justice litigation with regard to consumer protection…or any other matter of special concern to weaker sections of the society…"