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Public Interest Litigation
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I. INTRODUCTION

THE ISSUES brought before the courts in the year under review, through Public Interest Litigation (PIL), focussed on the accountability of those wielding constitutional and statutory authority. One area that invited judicial intervention was that of executive discretion in distribution of public largesse – be it in the allotment of government accommodation, or of petrol pumps, or grant of licences and exemptions. Human rights violations continued to dominate the PIL jurisdiction as did environmental causes. Limits of judicial intervention in PIL were delineated afresh even while the areas of intervention continued to expand.

II. PRACTICE AND PROCEDURE

The primary concern of the court in a PIL is the issue itself. Where the court is satisfied that the issue raised is of substantial public interest, the question of the petitioner's standing will not generally be an obstacle to the petition being entertained. The courts have insisted that PIL petitioners must, however, show that they are serious about what they are espousing, are willing to submit to the discipline of the judicial process and have no personal benefit to derive from the case. A repeated warning from the bench has been that a casual approach to serious issues is bound to harm the cause rather than advance it.

a. Locus Standi

In the early years of PIL, there was much discussion on the rule of *locus standi* since, in its very nature, PIL was seen as a departure from any rigid position in this regard. The relaxed rule of standing has now come to characterise PIL. Public spirited persons espousing causes could include teachers, lawyers and even politicians as long as they had no personal benefit to derive from the litigation.

Senior lecturers and leaders of various departments of Desh Bandhu College affiliated to the Delhi University filed a PIL in the Delhi High Court seeking a direction to the Union of India to institute an enquiry into the conduct of the principal of the college who after being charged in a murder case and suspended from service was reinstated by the governing body of the college. The petition also sought a writ to the university and the executive council to suspend the principal during the pendency of the criminal proceedings against him. One of the grounds on which the petition was resisted by the governing body was that the petitioners lacked the *locus standi* to question the action of the governing body. Repelling this contention, the Delhi High Court in *A.S. Ojha v. University of Delhi*[1] said:

> *[T]he petition is maintainable and to the extent it concerns the welfare of staff and students and general good of the society, it falls in the domain of Public Interest Litigation.*

The court proceeded to quash the decision of the governing body and issued a writ directing the university to place the principal under suspension pending the proceedings against him.[2]

The Chief Justice of the Patna High Court as its administrative head passed orders directing literate daily wagers to be appointed against class III posts of assistant, translator and typist on *ad hoc* basis provided they had the requisite qualification of a graduate. By other orders the Chief Justice granted extension of the period of service of his principal private secretary, secretary and assistant registrar beyond their age of superannuation. The employees of the High Court struck work in protest and also filed PILs alleging that the implementation of the orders gave rise to *ad hoc* choosing of persons for appointment on no particular rational basis. The extension of the service of the three officers was in excess of the powers of the Chief Justice. In *Sailesh Kumar Singh v. The High Court of Patna*,[3] the two judges hearing the case agreed that the PILs must be dismissed. However, they differed on whether the PIL was maintainable by the petitioner, an advocate practising in the High Court. B.L.

Yadav J negatived the argument advanced on behalf of the respondents that it was derogatory to the exalted status of an advocate to be a litigant himself by filing a petition in his own name. He held that in bringing the issue to court the petitioner had done a public service that deserved appreciation. However, in a separate opinion, A.K. Ganguli J referred to the averments in the petition to conclude that the real attempt was to obtain an order from the High Court for enforcing the demand of its employees. Ganguli J held that the employees were not prevented from filing a petition themselves and so the case was not maintainable as a PIL.

In *Ponnusamy v. State of Tamil Nadu*,[4] an advocate filed a PIL asking for a *mandamus* to the state government to remove its Advocate General from office. It was pointed out in the petition that the government had overlooked the fact that the incumbent had, on a complaint of having demanded bribe for offering legal opinion, been removed from the panel of legal advisors of a state undertaking. Further, there were proceedings against him before the Bar Council of Tamil Nadu. In addition he had made certain remarks at a function to welcome the Chief Justice of the High Court and these had been seriously objected to by the judges. He had also written to the central government seeking transfer of certain judges of the High Court. The Advocate General was being paid very high fees by the government disregarding established norms in this regard.

The petition was resisted by the government and the Advocate General as not being maintainable. It was contended that as long as the incumbent was qualified for the post and had been appointed by a competent authority by following the statutory procedure, the appointment could not be questioned on the ground that the person was not suited for the post or that his subsequent conduct disentitled him from continuing in the post. The court could not review the government assessment of the integrity and antecedents of the incumbent. Secondly, the post being a constitutional one, the appointment was akin to that of a judge of the High Court and could not be questioned on merits.

A Single Judge of the High Court negatived this contention holding that "where serious allegations are made against a high constitutional office, it is in the interest of everybody to disclose all the information…"[5]. To ensure smooth functioning of the court it was necessary not to leave such allegations undecided. The writ petition was held to be maintainable and directed to be listed for a final hearing.

The Rajasthan High Court refused to intervene at the instance of an advocate in a PIL questioning the action of the Chief Minister of Rajasthan in appending his signature to a joint representation made to the Governor by several persons seeking cancellation of proceedings initiated by the government to acquire 200 acres of land in the Rambagh polo grounds in Jaipur. The court held[6] that there was a statutory bar under article 163 (3) of the Constitution to the court looking into the communication made between the Chief Minister and the Governor concerning the acquisition of the land in question. It held that the petitioner had no *locus standi* as he had failed to explain how his legal rights had been violated. Consequently there could be no legal injury since the matter concerned the state and the ex-ruler of Jaipur to whom the lands belonged. The High Court's decision seems to overlook the fact that while a PIL litigant has to demonstrate public interest involved in the cause, none of his legal rights need in particular be affected. Further, the allegations were indeed of a serious nature and involved public revenues. The joint representation to the Governor could hardly be termed as a privileged communication inviting the bar of article 163 (3).

b. Bona Fides

A PIL petitioner has to satisfy the court that the cause being brought before it is genuine and that in espousing it he is acting in the public interest. If the court suspects that he may be deriving personal benefit or settling scores as in a private dispute, it may refuse to entertain the petition at his instance.

Yogesh Chandra, an MLA from Himachal Pradesh, in a PIL sought to restrain the state government from establishing mechanized units for manufacture of *katha*, an ingredient in *paan masala*. The High Court dismissed the petition for lack of *bona fides* as according to it the petitioner had failed to show that the resultant indiscriminate felling of *khair* trees, from which the *katha* was derived, would adversely affect the ecology and leave an insufficient number of trees to sustain the proposed industries. Reversing the High Court, the Supreme Court in *State of H.P. v. Ganesh Wood Products*[7] found that this was not reason enough to doubt Yogesh Chandra's

bona fides since he had approached the High Court to preserve the state's forest wealth. It remitted the petition to the High Court for a fresh consideration.

c. Pursuing the Cause

In *Balaji Raghavan v. Union of India*,[8] a Constitution Bench of the Supreme Court held that the institution and conferment of the awards of *Bharat Ratna*, *Padma Vibhushan, Padma Bhushan* and *Padma Shri* by the Government of India was not violative of either article 18 of the Constitution relating to abolition of titles, or of the principles of equality. One of the petitioners, A.P. Anand, had filed his petition in the High Court which was transferred to the Supreme Court and heard along with a petition by Balaji Raghavan. However, despite receiving notice about the time fixed for hearing, Anand did not present himself before the court nor were arguments advanced on his behalf. After the conclusion of the hearing, Anand sent a communication requesting that either his petition should be delisted or he should be given a hearing. Refusing to entertain the request, the court said:[9]

> *A public interest litigation cannot choose his forum. Once the case stands transferred to the Supreme Court, he must make arrangements to present himself and advance arguments before it… Litigants must conform to the time schedule fixed by the Court.*

However, the discretion of the court in PIL cases is as wide as the cause demands particularly if the allegations are serious in nature. As the case to be discussed immediately hereafter would show, the court can still give directions in public interest despite the petition being badly drafted or incompletely handled.

The petitioner in *Giani Devender Singh v. Union of India*[10] first approached the Madhya Pradesh High Court in a PIL in 1992 for a direction to stop the clandestine activities of smuggling and selling of opium, heroin and other narcotics in the premises of an oil mill near the *gurudwara* where he was *sevadar*. A division bench of the High Court, S.K. Jha and V.S. Kokje J, disposed of the petition saying:[11]

> *Howsoever absurd the prayer may be and whatever the intention of the petitioner in filing this petition, one thing is quite clear that he is obsessed with great and lofty ideals. Therefore, for whatever worth it is, in order to satisfy his vanity, we hereby direct to whomsoever it may concern that smuggling… in such dangerous articles be stopped… All those officers who are said… to be … (sic in collusion) with those carrying on these nefarious activities be sacked and the entire administrative machinery be overhauled by recruiting only conscientious and devoted people like the petitioner…*

Having approached other authorities with no result, Giani Devender Singh again approached the High Court complaining of non-compliance with the above order by the authorities. His application was dismissed saying that the earlier directions were of a general nature and no relief could be given to him.

The Supreme Court read the High Court's first order as being in "a lighter vein" and "couched in veiled sarcasm" and disapproved of the High Court giving a "mandate in general and sweeping terms… which were not intended to be implemented and were not capable of being implemented because of utter vagueness of the mandate and its inherent absurdity".[12] It also deprecated the sweeping allegations made in the special leave petition against a judge of the High Court and other judicial officers. However, given the seriousness of the allegations in the complaint that pertained to smuggling in narcotics, the court directed that the Director General of Police, Madhya Pradesh, should cause an enquiry to be made and take appropriate action on the basis of the report.[13]

d. Abuse of Process

The courts in PIL have reacted sharply to attempts by busybodies and self-appointed guardians of public interest to bring issues to the court which constitute abuse of process. This has become necessary in order to ensure that the relaxed rule of standing is not seen to be diluting the requirement that the petitioners do not make irresponsible and unverified allegations and that the courts' time is taken up only with such causes as are genuinely in the public interest.

Three inspectors of police in Madhya Pradesh, aggrieved by orders of repatriation to their parent departments, filed writ petitions in the High Court and obtained stay orders. The petitions came to be transferred to the state administrative tribunal upon its constitution. Apprehending that the stay may be vacated, the petitioners then filed a PIL challenging the constitution of the tribunal and appointment of its vice-chairman and members. The High Court's judgment quashing the appointments was reversed by the Supreme Court which took strong exception to the conduct of the petitioners in the High Court. It said:[14]

> *We are satisfied beyond any manner of doubt that the petitions... were, to say the least, motivated with a view to deriving personal benefits and not in public interest. Their idea was to paralyse the working of the Tribunal and benefit from the delay at the cost of other litigants. Otherwise how were they concerned with the legality of their appointment? This… is a glaring case of abuse of process of the court in the name of public interest.*

The Patna High Court strongly disapproved the attempt of the self-styled president of the *Mahavidyalaya Shiksha Sudhar Sangharsh Samiti* to have companies of central reserve police force and Bihar police camping in the premises of the A.N. College, Patna, removed through a PIL. After examining the affidavit of the principal of the college, the High Court found[15] that the petitioner was neither a student nor a parent of one. He was a busybody and had been arrested recently for disturbing the peace in the college campus which had been taken over by unruly elements. The petition itself was found by the court to be a gross abuse of process of law. Lauding the principal's efforts to restore law and order and discipline, the High Court directed the petitioner to pay him Rs.5,000/- as costs.

III. JUDICIARY

The procedure by which appointments to the judiciary at various levels are made would have remained largely unknown but for PIL petitions demanding transparency in the functioning of the constitutional authorities involved in the process. The dynamics of selection to judicial offices as revealed in PIL cases helps to understand the interaction between constitutional functionaries. It throws light on the role of the apex judiciary in the matter of determining qualifications for appointments to the judiciary; the procedure for making appointments; who will get appointed; what will be the conditions of service and by what mechanism and by whom will judges, once appointed, be held accountable.[16]

a. Appointments

In *S.P. Sampath Kumar v. Union of India*[17] the Supreme Court had, while examining the constitutional validity of the Administrative Tribunals Act, 1985 suggested that the appointments to the tribunals should be by selection by a high powered committee (committee) presided over by a judge of the High Court. The issue before the Madhya Pradesh High Court in *Sarwan Singh Lamba*[18] was whether the appointments of the vice-chairman and members of the Madhya Pradesh State Administrative Tribunal (tribunal) were invalid for the reason that

they had not been made by constituting the committee. Accepting this contention, the High Court quashed the appointments holding that the constitution of the committee was a *sine qua non* and the mere fact that the Chief Justice of India had on the administrative side approved the appointments would not render them valid. It held that the amendment to section 6 of the Administrative Tribunals Act (Act) was not in conformity with the Supreme Court's direction and did not ensure the validity of the appointments. It also found that R.P. Kapur and G.S. Patel used their influence as Chief Secretary and Law Secretary to get themselves appointed to the tribunal and their appointments were held to be fraudulent.

Reversing the High Court, the Supreme Court explained that the suggestion made in *Sampath Kumar* about constitution of the committee was only advisory. Since the constitution of the selection committee was communicated to the state government only a day after the Chief Justice of India had accorded his approval, it would not be correct to set the appointments of the members, one of whom was the Law Secretary, at naught and start the whole process afresh. As such there was no violation of any judicial order or statutory provision in making the appointments.

The Supreme Court took note of the fact that although in his capacity as Chief Secretary, R.P. Kapur was part of the selection committee which included the Chief Justice of the High Court and the Law Secretary, he did not participate in its deliberations since it involved his own appointment. It found that the High Court had read too much into the act of Kapur, as Chief Secretary, forwarding the file to the Chief Minister proposing himself for the post of vice-chairman of the tribunal. The court said that this was required to be done as per the rules of business and ought not to be construed as an act to influence the decision of the Chief Minister, Governor or the Chief Justice of India who were the constitutional functionaries involved in the process of making appointments. It would be wrong to read any oblique motive into the act of the Law Secretary, as member of the selection committee, himself carrying the file recommending Kapur's appointment to Patna for the approval of the Chief Justice of the High Court who was camping there. From his affidavit it was clear that the Law Secretary knew that his appointment had been cleared by the Government of India long before he proceeded to Patna and therefore would not be under the influence of the Chief Secretary so as to affect his independent judgment. The Supreme Court disapproved the High Court casting aspersions on these two persons without giving them an opportunity to explain the notings in the file which was perused by the High Court after the hearing concluded.

b. Judicial Accountability

In the matter of protection of the independence of the judiciary the members of the bar have always been in the forefront. In each instance in the past where the appointment of the Chief Justice of India was made overlooking the rule of seniority, the protest by the Bar Councils and associations was near unanimous. The challenge to the policy of transfer of judges of the High Courts was made through PILs brought by lawyers.[19] It was a section of the bar again that ensured through a PIL that the process set in motion by Parliament to impeach V. Ramaswami J was carried to its logical end.[20] The subsequent trend, however, seems to indicate that the judiciary would like lawyers to keep off and leave it to the judges themselves to regulate their functioning consistent with the growing demand for transparency and judicial accountability.[21]

Members of the Bar Council of Maharashtra and Goa (BCMG) and Bombay Bar Association (BBA) were agitated over reports that the Chief Justice of the Bombay High Court, A.M. Bhattacharjee J had been paid a disproportionately large sum in foreign exchange by a London publisher as royalty for his book 'Muslim Law and the Constitution'. The suspicion was that he might have been paid the sum for "other than the ostensible reason" since "certain persons who were seen in Court were being openly talked about as… (being able to) influence the course of judgments of the… Chief Justice of Bombay". Although the Chief Justice told the Advocate General for Maharashtra on 14.2.1995 that he had decided to resign, a few days thereafter he was quoted in the press as stating that while he may have made a mistake in accepting the offer of the publishers, he was only proceeding on medical leave and not contemplating resignation.

BCMG then passed a resolution demanding the resignation of the Chief Justice. On 22.2.1995 the BBA president was requested by the Chief Justice not to go ahead with the proposed general body meeting assuring that he would resign within a week, which resignation would be effective some 10 or 15 days thereafter, and that

in the meanwhile he would not do any judicial work. Finding that the Chief Justice had not in fact resigned as assured, the BBA on 1.3.1995 at a meeting passed a resolution demanding his resignation.

C. Ravichandran Iyer, an advocate, then filed a PIL in the Supreme Court seeking, *inter alia*, a direction to the BCMG, the BBA and the Advocates Association of Western India restraining them from coercing the Chief Justice to resign. He also sought investigation by the CBI, Reserve Bank of India and a *mandamus* to the Speaker for initiating impeachment proceedings. By the time the petition was heard in the Supreme Court, the Chief Justice resigned.

The Supreme Court examined whether it was constitutionally permissible for the bar to pass a resolution demanding the resignation of a judge. It examined the position under articles 121 and 124 (4) regarding discussion by Members of Parliament of the conduct of a judge and held:[22]

> *By necessary implication no other forum… is available for discussion of the conduct of a Judge… much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of the duties or to pass any resolution in that behalf. (emphasis supplied)*

The court devised a procedure to deal with such situations in future in order "to avoid needless embarrassment of contempt proceedings against the office bearers of the Bar Association and group libel against all concerned".[23] The bar should directly approach the Chief Justice of the High Court in the case of a judge of the High Court and the Chief Justice of India in the case of a Chief Justice of the High Court. It should suspend all further action and wait for a reasonable period till the CJI takes a decision which would be final.

This was perhaps an instance of a PIL that far from achieving its purpose ended in taking the law a few steps back. The debate which ought to have kept in focus judicial accountability shifted to the right of the lawyers to discuss the conduct of judges. In curbing this right, the decision may have failed to acknowledge that lawyers as a part of the institution, and in close interaction with it, could be in a vantage position to question its functioning and offer constructive criticism.

c. Image of the Judiciary

A different standard would seem to apply if lawyers were to come forth to protect the image of the judiciary. As an institution wielding public power, the judiciary invites comment on its performance in the press and in films. Whenever this appears to exceed the judicially perceived limits of the freedom of expression and constitutes an affront to the prestige and image of the judiciary, lawyers are quick to react by filing PILs which are then readily entertained by courts. This is because the issue has been viewed as one of preserving the faith of the public in the rule of law and the justice delivery system.

Apprehending that certain scenes in two films cleared by the censors for public viewing might erode this faith, lawyers approached the High Courts of Andhra Pradesh and Karnataka through PILs. Mallikarjuna Rao's grievance was that the scenes in the film 'Gentleman' which showed a presiding judge stand up to pay obeisance to a Chief Minister as he enters the courtroom, and another showing the icon of the goddess of justice as holding currency notes in the scales, were offensive. The Andhra Pradesh High Court[24] agreed that the scenes were "derogatory to the cause of justice denigrating the court. It is nothing but scandalising the court as a corrupt institution, corrupting the minds of our cinegoers that justice in the court can be purchased".[25] The court ordered expunging of the offending scenes.

The Karnataka high Court[26] agreed with petitioner Amrutesh that the scene in the Kannada film "Kona Eedaite" which showed the peon of the judge as being able to influence his decision in a case was objectionable as it would affect the minds of common people to thinking that "Class 4 employees or some other elements can be made use of by them, for the purpose of polluting the course of justice".[27]

d. Subordinate Judiciary

Judges are, subject of course to the doctrine of necessity, not expected to be 'interested' in their own cause. But some of them could be petitioners before others of their fraternity when they present themselves as an association in a PIL demanding better conditions of work. In *All India Judges Association v. Union of India*,[28] the Supreme Court gave elaborate directions to the central and state governments for improving the conditions of work of the subordinate judges. This apart, the court prescribed the desired minimum qualification for recruitment to the judiciary and the age of retirement of subordinate judges. Subsequently, the implementation of these directions has been constantly monitored by the court.

In its main judgment[29] the Supreme Court had recognised that "a reasonable salary, appropriate allowance and manageable living conditions" are required to be provided to members of the subordinate judiciary and towards that end had directed the Union of India to provide residential accommodation to every judicial officer by 31.12.1992; every district judge and chief judicial magistrate was to have a state vehicle and judicial officers a pool vehicle in sets of five. This was to be done by 31.3.1993.

The Union of India sought a review of the judgment on the ground that about 5000 houses costing Rs.150 to 200 crores would have to be constructed. The court observed that this meant that about 50 per cent of the judicial officers "are facing trials and tribulations for want of a proper accommodation at rentals within their means". Further, even assuming the estimate of expenses to be correct, it was "not forbidding". Time was extended upto 31.3.1994 "to provide suitable residential accommodation, requisitioned or Government, to every judicial officer".[30]

The state governments despite the extensions of time did not accord the required priority to the implementation of the directions. On 7.9.1995 when the Supreme Court reviewed the position statewise, it found that in Andhra Pradesh, the Finance Department had in violation of the Supreme Court's order ruled out the purchase of vehicles. Only on 24.6.1995 were orders issued to the district collectors "to take necessary action for providing residential accommodation to judicial officers". For the provision of libraries, again the Finance Department had not yet released funds. The court issued contempt notices to the Chief Secretary and to the Secretary, Finance Department. In Bihar residential accommodation was provided in only 22 of the 55 districts. Three more months were granted to the state or compliance. In Delhi, the houses provided were 35 kms. away from the courts. In Gujarat 322 of the 598 officers were still staying in a private accommodation and for whom the government was paying house rent allowance. Three further months were granted to Gujarat and to most states which reported "substantial compliance". As regards the direction to constitute an All India Judicial Service under article 312 of the Constitution, the Union of India explained the delay as owing to the states not yet having responded. The court granted six more weeks for this purpose.[31]

In the main judgment, the Supreme Court had stipulated that the minimum qualification for a person to enter the lowest rung in the judiciary would be three years' legal practice. By separate orders in respect of Gujarat[32] and Kerala,[33] the Supreme Court clarified that this stipulation pertained to recruitment from the bar. As regards Gujarat the legality of the appointments from among the staff of the High Court and subordinate courts on their completing five years of service, two of these after obtaining a law degree and passing a written exam, was held to be valid. The Supreme Court clarified that in Kerala the rules amended in line with its judgment would be prospective.

The case demonstrates the extent to which the subordinate judiciary is dependent on the state governments for the provision of basic infrastructure for its functioning. The necessity for repeated directions to the state governments and the constant monitoring by the Supreme Court of their implementation gives cause for concern that strict separation of the judiciary from the executive may not be achievable in real terms.

IV. PUBLIC ACCOUNTABILITY

The system of government by law depends heavily on the implied trust that constitutional and statutory authorities exercising the power of the people will act *bona fide* and in the public interest. The betrayal of that trust, as was demonstrated in case after case that reached the courts in the year under review, is symbolic of a systemic failure that calls for drastic remedies. PIL facilitated judicial intervention to detect the malaise, prevent its spread and initiate remedial measures. In doing that, the judiciary also had to exercise its internal hierarchical control to prevent enthusiasm clouding judicial perception of the permissible limits of review of executive action.

a. Pleasant Stay Hotel Case

Pleasant Stay (Kodai) Hotels Pvt. Ltd. ('hotel') applied to the Kodaikanal Township Committee to grant permission for construction of a hotel with a ground floor and a first floor. After this was approved the hotel applied for sanction of a revised plan for constructing more floors in the space below the road level and above the natural earth level. The plea taken was that while digging the foundation it was realised that strong columns up to 50 feet below the approved plan would be required and the hollow space so created would have to be filled. Instead, the hotel proposed to put up additional floors. This was rejected by the committee and even while its appeal was pending the hotel proceeded with the construction inviting a warning notice from the committee.

At this stage, the Palani Hills Conservation Council (PHCC) filed a PIL in the Madras High Court seeking a writ of *mandamus* to the state government to ensure that the hotel did not put up any illegal construction. An interim order was passed restraining the hotel from constructing floors beyond the sanctioned plan.

While the petition was pending, an amendment was made to the Tamil Nadu District Municipalities Act, 1920, taking away from the local committees the power to grant licence for construction and use of land in the hill stations and vesting it in the state government. The appeal filed by the hotel to the government came to be treated as an application under the amended provisions of the Act. The Architectural and Aesthetic Aspects Committee recommended rejection of the application and the Secretary, Department of Local Administration also took the view that the hotel's request be rejected on account of the gross violations committed by it. The file was thereafter sent to the minister.

With the hotel proceeding with the construction, PHCC filed a contempt petition in which the High Court imposed a fine on the hotel and placed further curbs on it. Thereafter, the minister made an order on the file that the hotel be granted exemption from the rules that had been violated by it. This note was simply endorsed by the Chief Minister without entering any minute or remark.

A second writ petition by the PHCC ensued and a further interim order was passed by the High Court restraining the hotel from making further constructions. When PHCC pointed out that the government had no power, under the amended statute, to grant exemption to a private building, the government promptly tabled a further statutory amendment in the legislature giving itself the power to do so. This was followed by a government order retrospectively exempting the hotel's building from the provisions of the Development Control Rules relating to floor space index. PHCC filed a third writ petition challenging this. Meanwhile, the hotel proceeded to construct a residential building of seven floors, four of them above the road level, although the sanctioned plan was for just two floors.

Allowing the PIL, the High Court quashed the government order granting exemption holding it to be arbitrary and issued a further *mandamus* that the portion of the building constructed in violation of the sanctioned plan be demolished. The sequence of events showed that the hotel had even in the beginning planned to deceive the authorities and proceeded to construct a different building in utter violation of the rules so that it could put forward a plea of *fait accompli* and avoid demolition. The High Court found that the case of the hotel that it realised the need to have strong columns after digging the foundation was an afterthought and clearly false. Contrary to the express purpose of the amendment to the Act, the minister had overlooked the environmental and ecological aspects and granted exemption although there was no justification for it.

The Supreme Court in *Pleasant Stay Hotel v. Palani Hills Conservation Council*[34] upheld the judgment of the High Court as being based on a proper appraisal of the record before it. The court found not only "factually correct" but "absolutely necessary" the observations of the High Court that neither the minister nor the Chief Minister had applied his or her mind to relevant materials but had taken note of irrelevant matters. The apparent ambiguity in the High Court's order about which floors had to be demolished was left for resolution by the High Court itself.

b. ISRO Espionage Case

The *dictum* that no one is above the law gets tested every time there is a complaint that some public authority or person exercising public power has not discharged a statutory duty *bona fide*. The investigation by the CBI in the *ISRO Espionage* case invited charges from certain public spirited citizens that the Inspector General of Police in Kerala was being let off by the investigating agency unjustifiably and for the oblique reason that he was close to the Chief Minister. The fairness of the investigating agency was in question.

A PIL was filed in the Kerala High Court by an organisation called Niyamavedi seeking a direction to the CBI to arrest Ramon Srivastava, IPS, Inspector General of Police, South Zone, Kerala, for his alleged involvement in the case and a direction to the Kerala Government to suspend and remove him from service. A single judge dismissed the petition as the power of the court to interdict an investigation which was in progress was limited. Although a division bench of the High Court dismissed Niyamavedi's appeal, it referred to and set out in the judgment the material disclosed in the course of investigation which was yet to be completed.[35] In an appeal by the CBI, the Supreme Court observed that the High Court should have refrained from disclosing material contained in the case diaries and the statements made to the police, or making comments in the manner in which CBI was conducting the investigations. It said:[36]

> *Any observations which may amount to interference in the investigation, should not be made. Ordinarily the court should refrain from interfering at a premature stage of investigation as that may derail… and demoralize the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences.*

c. Chandraswamy

The question again arose in connection with CBI's investigation into cases involving the Prime Minister and a self-styled godman Chandraswamy. The allegation was that the CBI was dragging its feet and therefore not discharging its constitutional and statutory obligations. The Supreme Court intervened only insofar as this failure by an agency to discharge the functions entrusted to it would be a breach of public trust reposed in such agency and violative of the rule of law. The issue was of vital public interest and called for judicial intervention to ensure that those who violated the law were brought to book.

Anukul Chandra Pradhan, an advocate, filed a PIL in the Supreme Court seeking directions to the Union Government and the CBI regarding investigations into the cases which were a fallout of the disclosure in the 'Jain Diaries' of the nexus between criminals, politicians and bureaucrats in receiving tainted money obtained through '*hawala*' transactions from unlawful source as unlawful consideration. The petition also sought to expedite the investigation and the filing of chargesheets in two criminal cases involving the former Prime Minister, P.V. Narasimha Rao – the *St. Kitts Forgery* case and the *Lakhubai Pathak Cheating* case. Chandraswamy, an accused in these cases, was by an order of the Supreme Court directed not to make any attempt to leave India until further orders and without the express permission obtained from the Supreme Court.[37] The Supreme Court listed the case for further monitoring of the progress of investigations. This was in order to ensure that the efforts of the investigating agency were on a sustained basis and not thwarted by those in government for their political ends.

d. Out of Turn Allotments

Petrol pumps

In a welfare state where it is a constitutional commitment that the distribution of wealth should best subserve public good, much depends on the fairness of state agencies in ensuring equitable sharing of public largesse. Nepotism or favouritism in the exercise of executive discretion is a breach of the public trust that such power will not be abused. The issue, therefore, admits of accountability to the public and thus invites judicial review, in the public law domain. It also becomes necessary for the judiciary to set limits on the use of such discretion.

The central government's discretion in the allotment of retail outlets for petroleum products, LPG dealership and SKO dealership without any guidelines governing such discretion was challenged in *Centre for Public Interest Litigation v. Union of India*.[38] The Supreme Court requested the Attorney General for India to submit draft guidelines and in the judgment set down the norms that would govern all future allotments of dealerships under the discretionary quota on compassionate grounds. The norms stipulated that the discretionary quota should not ordinarily exceed 10 per cent of the average annual marketing plan of which allotments of retail outlets for petroleum products should not exceed 5 per cent. The discretionary quota was outside the purview of the oil selection boards.

Thus the first step towards limiting the discretion of the government in distributing public resources was taken. The government was compelled to spell out these limits itself while at the same time remaining accountable to the law. The recognition of this responsibility by the government was a singular achievement of the PIL.

Government accommodation

The government again found itself having to be accountable for its exercise of discretion in another area of distribution of public resources. In a PIL by Shiv Sagar Tiwari, an advocate, the Supreme Court dealt with the problem arising out of the arbitrary allotments of residential accommodation made "out-of-turn" to government servants under the discretionary quota. In an order made on 20.11.1995[39] the court, after noting that the government made allotments out-of-turn on functional and medical grounds and on grounds of security, asked it to explain the basis for creation of these categories and also indicate the total number of houses allotted thereunder. The CPWD informed the court that it had taken over, since 1987, 264 quarters for repair and far from having them repaired, its employees were using them for extraneous considerations. Even while the government promised to hold an enquiry, the court directed the CPWD officers to hand over the repaired quarters by the end of December warning that any disobedience would invite contempt proceedings. As in most PILs, the court kept the case pending before it for further monitoring. This was the most effective way of ensuring that the government remained answerable to the court and was constantly kept aware of its obligations under the law.

V. ENVIRONMENT

The role of PIL in bringing issues concerning the environment to court with a view to finding solutions can never be overemphasised. The year under review saw PIL continuing to be an important link between peoples' environmental concerns and the courts. These included protection of the country's fragile coastline from corporate intrusions under the pretext of tourism and development, preservation of the ecology despite executive indiscretion and insensitivity.

a. Coastal Regulation Zone

A notification issued in 1991 by the government under the Environment (Protection) Rules, 1986, described the coastal regulation zone (CRZ) as the stretch up to 500 metres from the high tide line (HTL) and the land between the low tide line and the HTL and placed restrictions on activities within CRZ with a view to protecting its ecology. In a petition the Indian Council for Enviro-Legal Action informed the Supreme Court that the CRZ was being observed in the breach and unauthorised constructions and industries were being permitted. By an order in December, 1994,[40] the Supreme Court directed the state governments not to permit the setting up of any industry or any construction up to 500 metres from the sea water at the maximum high tide. By a subsequent order,[41] the court modified the direction and directed that none of the activities mentioned as being prohibited under the CRZ notification would be permitted. It took note of an interim site visit report prepared in the Ministry of Environment and called for an action-taken report thereon.

b. Shrimp Farms

Dotting the coastline in Pondicherry, Tamil Nadu and Andhra Pradesh were a large number of aquaculture farms breeding shrimps for export. A Gandhian from Tamil Nadu, S. Jagannathan, in a PIL before the Supreme Court explained that this activity apart from disturbing the ecological balance of the fragile coastline, was resulting in denial of access to the sea for fisherfolk. The other problem was the non-availability to the villagers of fresh ground water all of which was being consumed by the shrimp farms.

The Supreme Court in *S. Jagannathan v. Union of India*[42] directed the respective state governments to provide free access to the sea through the aquaculture units and also arrange to supply drinking water to the villages through tankers. The court directed that no groundwater withdrawal for aquaculture purposes be permitted to any of the industries set up or in the process of being set up and no shrimp or aquaculture farm be permitted to be set up in the ecologically fragile areas of the coastline. The case was adjourned to consider the response of the state governments to the report submitted by 13 scientists belonging to the National Environmental Energy Research Institute (NEERI) after a visit to the areas affected. The Collectors and Superintendents of Police were directed to ensure enforcement of the court's orders.

It needs mention that the Supreme Court has tended to increasingly rely upon NEERI for giving it an objective assessment of the ground situation regarding the environment in any particular area in the country. This has been mainly due to the non-functioning and unreliability of the statutory pollution control boards. The orders made by the Supreme Court from time to time are a pointer to the fact that the mere existence of laws or statutory bodies created by them offers no solution to the problems that threaten the health and life of the citizen. PIL has been a monitor of the performance of these statutory authorities which have abdicated their essential functions so far.

c. Nainital

Ajay Singh Rawat, a member of the Nainital Bachao Samiti, petitioned the Supreme Court seeking its intervention to prevent further pollution of Nainital, a hill station in Uttar Pradesh. The court called for a report from an advocate to be appointed by the district judge. The report disclosed that the Nainital lake, its chief attraction, had turned dark green with an oily surface and was full of dirt, human faeces, horse dung, paper, polythene bags and all sorts of waste. There was unauthorised construction of buildings even by the Kumaon Mandal Vikas Nigam, a state government undertaking and the Lake Development Authority. The Ballia ravine through which the overflow of water from the lake passed was in a dilapidated condition. The fine for illegal felling being Rs.5,000/- and the illegally cut tree fetching twice to five times more, illegal felling was unabated. The court

by an order[43] disposed of the petition directing that sewage water and horse dung had to be prevented from entering the lake and that there should be a ban on construction of multi-storied group housing and commercial complexes in the town area of Nainital. It recommended constitution of a monitoring committee comprising public-minded persons for taking concrete steps.

d. Narayan Sarovar Sanctuary

The case before the Gujarat High Court concerning the Narayan Sarovar Sanctuary was an instance of executive action defeating the purpose of legislation intended for preserving wildlife. Even innovative interpretative exercises could not prevent the court exposing the real intentions of the government.

An area of 765.79 sq. km of land in Lokhapt *taluka* of Kutch district in Gujarat was notified in April, 1981 under the Wildlife (Protection) Act, 1972 (Act) by the Gujarat Government as a wildlife sanctuary. The area of this sanctuary, known as the Narayan Sarovar Sanctuary, was sought to be reduced to a mere 94.87 sq. km (and renamed as Chinkara Wildlife Sanctuary by the government by canceling the earlier notification and issuing another in regard to the renamed sanctuary. The remaining land was proposed to be allotted to a company in whose favour a mining lease for quarrying limestone and for setting up a cement factory was sought to be granted.

This was challenged by two public interest groups working in the field of environment protection[44] on the ground that under the amended section 26 A(3) of the Act, the boundaries of the sanctuary could be altered only by a resolution of the state legislature. The government resisted the PIL contending that the requirement under section 26 A(3) was prospective and applied only to those sanctuaries notified under the newly inserted section 26(1) of the Act. It did not apply to the Narayan Sarovar Sanctuary which was notified under the unamended section 18 (1) of the Act. The government also sought to take recourse to section 21 of the General Clauses Act to justify the cancellation of the earlier notification although no specific provision in the Act gave such power to the government.

The Gujarat High Court[45] negatived the government's contention and struck down both the notifications. It held that given the context of the Act, the requirement of section 26 A(3) that there must be a resolution of the state legislature for altering the boundaries of a sanctuary would apply to those sanctuaries notified under the unamended section 18(1) as well. Admittedly this was not done. The government could not justify its exercise of power by taking recourse to section 21 of the General Clauses Act when there was a specific provision in this regard in section 26 A(3). The court negatived the government's objection that the issue was not of public interest by observing that environment was everyone's concern.

The court's timely intervention prevented what could have resulted in an irreversible environmental disaster. The repeated abuse of executive power to permit mining and setting up of industries in land comprising wildlife sanctuaries has warranted careful and periodic judicial vigil through PIL.[46] Given the abysmal record of governments in this area, PIL continues to remain an important avenue for environmentalists to pursue preventive and corrective measures.

e. Slaughter Houses

The tussle between the needs of a meat eating population and the livelihood of those in the industry on the one hand and the concern of health and hygiene on the other continued to dominate the cases concerning slaughter houses. Courts tended to view the environmental concerns as non-compromisable leaving the alleviation of the related problems to the government.

The closure of Idgah Slaughter House in Delhi was ordered by the Delhi high Court in *Maneka Gandhi v. Union Territory of Delhi*.[47] The maximum number of animals that were permitted to be slaughtered per day was pegged at 2500 and even that only where the abattoir was able to maintain the minimum standard of hygiene

and sanitation. Thereafter in an appeal by the Buffalo Traders Welfare Association, the Supreme Court appointed a committee to look into the related aspects of requirements of meat, and livelihood of those employed in the trade, keeping in mind the environmental aspects and directed the reports of the committee to be placed before the High Court.

The committee in its report observed that the abattoir had outlived its utility and that the only solution was the construction of a modern mechanized slaughter house. The High Court after considering the report held[48] that it was not possible to increase the maximum number of animals to be slaughtered per day beyond 2500 without compromising on the minimum standard of cleanliness and hygiene. Although this was hardly adequate even for domestic consumption, the court felt that there should be no problem in getting supplies from other places. As regards those employed in the trade, the court reiterated its earlier order directing the government to frame a scheme for rehabilitating those rendered jobless on account of the abattoir's closure. The Union of India and the Delhi Government were directed to set up a modern mechanized abattoir and the Idgah Slaughter House was directed to be closed on or before 31.12.1995.

The concern about slaughter houses was also echoed by the Supreme Court in the PIL by M.C. Mehta in regard to the pollution in and around the Taj Mahal. The Court in *M.C. Mehta v. Union of India*[49] stated "the construction of slaughter house at Agra is most important for environmental protection, pollution control and tourism purposes. The Taj Mahal at Agra attracts a large number of tourists every year. The city has to be kept clean and pollution free. We are of the view that the construction of slaughter house at Agra has to be taken up separately and with utmost urgency".

f. Tanneries

The pollution caused to water and soil by the discharge of untreated effluents from the tanneries in Tamil Nadu formed the subject matter of a PIL in the Supreme Court by the Vellore Citizens Welfare Forum. By an order of 9.9.1995,[50] the Supreme Court noted that the report of the Tamil Nadu Pollution Control Board showed that about 299 industries were in the process of setting up common effluent treatment plants with the help of the Tamil Nadu Leather Development Corporation. The court gave these industries time till the end of December, 1995 to complete the process. The report further showed that 162 tanneries had not even started the primary work for setting up pollution control devices ignoring the various orders that had been made by the court in the matter over the past two years. The water in the area where they operated had become unfit for drinking. The court directed the closure of the 162 tanneries and directed the district magistrate and superintendents to ensure compliance. The pollution control board was directed to carry out periodic inspections and if it reported substantial progress in the work in these tanneries, the closure orders would be modified.

g. Graphite Mining in Orissa

Bolangir district in Orissa has large deposits of graphite for mining which the factories there exploit with the labour of women and children by paying them less than the minimum wages. This was confirmed in a study undertaken by Bijay Kumar Badu which led to the Orissa government constituting a committee to study and report on the conditions of the workers in the graphite industry. When nothing happened thereafter, an advocate, Samsad Khan, moved the High Court and in addition highlighted the threat to environment posed by the graphite industries discharging untreated effluents into the Lenth river which was the district's only source of water for drinking and bathing purposes. The government confirmed that there were large scale infractions of the extant labour laws by the industries and they were being proceeded against in different courts for this. A committee had been constituted to suggest remedial measures. By an order,[51] the Orissa High Court constituted another committee to make an indepth study of the problems relating to environmental pollution and implementation of labour laws and submit a report which would then be considered by the government within six months in order that it could "take an appropriate decision expeditiously". The High Court thought it fit to

mention that the representatives of the graphite industries and rice mills would be allowed to put forth their views before the committee. If the High Court intended that this opportunity had to be afforded to the labourers as well, the order did not mention it.

h. Polluter Pays Principle

The hazardous consequences that the unchecked growth of industry has for the environment were highlighted in some of the decisions in the year under review. Recognising that the growth of industry has been at the cost of the environment, the courts have fastened the resultant liability for environmental destruction on the polluter by making it pay damages to those affected.

56 industries in Andhra Pradesh functioning in the Patancheru Bolaram districts in Andhra Pradesh were found to have discharged untreated effluent into the river Nakkavagu. The court on the consideration of a report of NEERI held by an order dated 19.11.1995[52] that these industries would be responsible to compensate the villagers in 10 villages which had been estimated by the state government at Rs.28.34 lakhs. The court found that industrialists had contributed only Rs.7.5 lakhs out of which only Rs.6.5 lakhs had been disbursed to the farmers. The court directed the state government to deposit the differential amount and recover it from the industrialists.

Relocation of Delhi industries

An environmental issue is seldom uni-dimensional. Polluting industries, when allowed to function unhindered over a period of time, become a source of livelihood to the local population who invariably live in close proximity to their places of work. Any legal intervention to check the pollution, which may even result in relocating the industries, will have to account for the human problem of displacing thousands of families from jobs and homes. The problem of pollution by industries in Delhi involved these complexities and demanded judicial innovation to find equitable solutions.

A writ petition filed by M.C. Mehta in 1985 questioned the functioning of hazardous industries in and around the vicinity of the National Capital Region of Delhi. The petition witnessed a resurgence of judicial activism ten years later when in an order dated 24.3.1995 in I.A.No.22 in the said writ petition,[53] the court took note of the affidavit of the Secretary (Environment), Government of Delhi wherein he stated that there were as many as 8378 industries including noxious, hazardous, heavy and large industries, operating in the non-conforming areas in violation of the Delhi Master Plan formulated under the Delhi Development Authority Act, 1957, Delhi Municipal Corporation Act, 1957 and the Factories Act, 1948. Notices were directed to be issued to all the industries indicating that these industries had to stop functioning in Delhi and had to be relocated elsewhere.

The message had to be clear that the court would simply not permit industries to function any longer in Delhi. Fresh licences had to be immediately stopped in order to avoid a *fait accompli* being presented to the court at a later date. By a further order made on 30.11.1995,[54] the court directed the Municipal Corporation of Delhi "not to register or give licences to any hazardous/ noxious industry in Delhi". The authorities were also directed not to permit any construction or conversion of any land into industry and not to renew licences without the permission of the court.

This way the court retained control of the case and made the local administration directly accountable to it. These innovative strategies at case management were possible largely because it was a PIL and technicalities would not be permitted to thwart the course of justice.

VI. HUMAN RIGHTS

Judicial activism in the area of human rights has been facilitated in considerable measure by PIL. Executive excesses resulting in denial of basic rights of detenus and undertrials has continued to engage the court's attention in this jurisdiction which has made possible the access of these causes to the court in a direct and expeditious manner.

Custodial deaths

Based on newspaper reports about the custodial death of a scheduled tribe youth, two writ petitions, one by an advocate, were entertained by the Orissa High Court.[55] The facts that emerged were that while a *kirtan* was being performed by the villagers of Tengenabasa in Nawapara district, at around 9 p.m. a police party headed by the circle inspector who was in an inebriated state arrived there. After making the villagers stand in a queue, the policemen picked out the deceased Dhanmat Majhi and rained lathi blows on him. Even while his wife and mother fell upon Majhi to save him, he was dragged away in a jeep and brutally assaulted at the Nawapara police station. The residents of the locality could hear shrieks which then suddenly died down. Majhi was brought to the hospital the next morning and declared dead. When the local MLA met the Director General of Police, he was told that Majhi had died in a motor accident.

The police informed the High Court that they had gone to the village to execute a non-bailable warrant of arrest of Majhi and were assaulted by Majhi's mother and wife. While the policemen were saving themselves, Majhi fled and fell down near the wall of his house. He was apprehended and taken to the outpost where cases were registered against him and his family members. While he was being taken to the police station he "developed illness". Even as he was undergoing treatment at the hospital he expired.

During the course of arguments, counsel for the petitioner referred to a news report which set out the Chief Minister's statement in the legislative assembly that a case had been registered against the policemen involved. With the court getting no response from the government on this, it *prima facie* concluded that it was a custodial death but hastened to add that this was for the limited purpose of awarding compensation and would not cause any prejudice to the police officers facing criminal trial. The court awarded Rs.50,000/- to Majhi's widow and directed that this would be adjusted against any future compensation claimed in separate proceedings by her.

On the same day the Orissa High Court dealt with another case of death in police custody.[56] The High Court received a telegram from certain advocates in Sambalpur district that a betel shop owner Bijay Kumar Choudhury was beaten to death by officers of Sambalpur police station. The telegram was treated as a writ petition and notices issued to the police. The police said that on receiving information that the deceased in an inebriated state was creating disturbance they apprehended him, took him to the hospital and gave him a stomach wash. However, his condition deteriorated and he ultimately died. The doctor who conducted post mortem found three injuries of which two were abrasions near the right ear and right forearm and there was one contusion on the forehead. Despite this, he opined that death was possibly due to alcoholic intoxication.

The High Court found that the autopsy doctor was "hand-in-glove with the concerned police official"[57] and that "there are certain suspicious circumstances which speaks volumes of the public officials involved in the incident".[58] However, it concluded that although there were *ante-mortem* injuries, further investigation was required to find out whether they were sufficient to cause death and who was responsible for the same. Therefore, it merely directed the Deputy Inspector General of Police (Crimes) to investigate into the matter "in accordance with law" since one of the officers involved belonged to the IPS.

PUCL informed the Supreme Court in a petition that a fake encounter was staged by the district police in Lunthilian village in Churachandpur district on 3.4.1991. Two villagers were taken away and killed at point blank range. Later a false FIR was registered alleging that when the police tried to apprehend some hard core leaders of the Hamar People's Convention (HPC), they were fired upon and that the two persons died in the exchange of fire. The petitioners pointed out that the *post mortem* report showed that not only all entry points of the bullets were at the back of the deceased but there was "blackening, tabooing and scrooting" in respect of

one of the bullet entry points on one of the deceased confirming that they were shot at from behind and at close range. Since the matter involved disputed facts, the Supreme Court in *PUCL v. Union of India*[59] directed an enquiry to be conducted by the District and Sessions Judge, Churachandpur and the report was to be submitted to the court within six months. The entire record was to be made available to him and he was directed to issue notices to the petitioners and respondents before commencing the enquiry.

Prisoners

Parmanand Katara, an advocate, in a PIL challenged the method of execution of death sentence by hanging as prescribed under the *Punjab Jail Manual* as being inhuman and violative of the fundamental right to life under article 21. He further contended that the procedure under para 873 of the manual requiring the body of the prisoner to be kept suspended for half an hour after it fell from the scaffold violated the right to dignity which attached to a dead body too. The court while rejecting the first contention accepted the second and directed that the jail authorities should not keep the body of the condemned prisoner suspended after the medical officer had declared the person dead.[60]

Kuldip Nayar, a renowned journalist and president of Citizens for Democracy, upon visiting a government hospital in Gauhati, Assam was shocked to find TADA detenus kept in one room handcuffed to the bed and tied to a long rope to restrict their movement. This in spite of the door being locked from outside and a posse of armed policemen guarding them. The letter sent by him to the court was treated as a petition and on examining the affidavit filed by the State of Assam, the court held that "the handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and in utter violation of human rights".[61] The court declared that handcuffs or other fetters shall not be forced on a prisoner while lodged in a jail or while in transport or transit from one jail to another or to the court and back. The authorities had to take permission of the magistrate for handcuffing the prisoner.

Handcuffing the in-laws

At a conference of Collectors and Superintendents of Police, the Chief Minister of Orissa expressed shock with the case of dowry deaths in the state and a decision was taken to issue a circular to all police stations that as a deterrent at the time of arrest the mother-in-law should be handcuffed and the sister-in-law shackled at the legs. The slogan '*Sasu Hatare Kadi, Nanada Hatare Bedi*' was directed to be given publicity to create awareness in society. The circular was challenged in the Orissa High Court by the People's Union for Civil Liberties (PUCL) as violative of the right to life enshrining the right to dignity. In *People's Union for Civil Liberties v. State of Orissa*[62] the High Court quashed the circular terming it as "sadistic, capricious, despotic and demoralising". The action of the DGP in violation of the law explained in the decisions of the Supreme Court was deprecated and it was observed that "the police administration in the hands of such a person is totally unsafe".

Undertrials

TADA detenus had other severe difficulties when it came to their rights to speedy trial of the cases against them. This was highlighted by the Shaheen Welfare Association in a PIL before the Supreme Court. In its order on 12.10.1995,[63] the Supreme Court noted that in the State of Gujarat the state review committee[64] had not met for nearly 10 months to determine whether some of the 14,446 pending TADA cases involving 42,488 persons required to be proceeded with. While 5998 of these persons were still in custody, 6044 were absconding. In cases investigated by the CBI, the review committee had decided to retain the charges under TADA which meant that these cases went out of its purview. The Supreme Court asked the Union of India to clarify the position and adjourned the case. In its further order a month later[65] the court passed on to the Union of India the information on pending TADA cases collected and forwarded to the Supreme Court by the National Human Rights Commission to enable the government to suggest ways and means of expediting the trials.

Pendency of a PIL in the court for a long period reveals the changes in judicial perception of the problem. A PIL filed in 1979 seeking the enforcement of the right to speedy trial was closed by the Supreme Court after 16 years. In its order,[66] the court said that it shared "the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations" but felt that the task of monitoring the implementation of the various guidelines laid down by the Supreme Court should be left to the High Courts. This was in marked contrast to the deep anguish expressed by the court in a flurry of orders made in the case soon after its inception.[67] The court then had formulated several issues that required determination the right to speedy trial, the right to legal aid, the need to humanise the jail administration, the need for guidelines to govern the exercise of statutory duty of the police to comply with the requirement of section 167 (2) Cr PC in regard to periodic production of the prisoner before the concerned magistrate. In fact the court then had asked the case to be placed before it for a final hearing in July, 1979 and nothing significant had happened since. Given the long pendency of the case and the range of issues that it raised, the curtain order[68] is disappointing. An opportunity to evaluate the progress of implementation of the court's directions and to remind the executive of its constitutional obligations was perhaps given a go by.

Shankar v. State (Delhi Admn.)[69] saw the Delhi High Court deal with the problem of undertrials in Tihar jail who continued to remain there despite being granted bail since they could not furnish sureties. After directing the release of petitioner Shankar by relaxing the bail conditions, the court appointed advocate commissioners to examine the cases of 368 others similarly placed. The court had 107 of them released by relaxing the bail conditions and another 155 at the time of disposing of the case. A direction was issued to the district and sessions judges before whom cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 were pending to take up on priority basis the trials of those undertrials who had remained in jail for more than five years.[70]

Punjab

The reports of the Supreme Court decisions continued to record the sordid saga of police excesses in Punjab. PIL played a significant role in taking the issue to the court and compelling, through the court's processes, corrective state action.

Navkiran Singh and 16 other advocates practising in the Punjab and Haryana High Court sent a letter petition to the Supreme Court voicing concern over the kidnapping and elimination of advocates in the State of Punjab. Besides Kulwant Singh the letter also referred to the killing of two other advocates Ranbir Singh Mansahia from Bhatinda and Jagwinder Singh from Kapurthala, by the Punjab police. Unhappy with the responses it received from the State of Punjab the Supreme Court in Navkiran Singh v. State of Punjab[71] directed the CBI to investigate the kidnapping of these two advocates. It also mandated that the State of Punjab provide security to all those advocates who genuinely apprehended danger to their lives from militants.

Mentally ill in jails

The case pertaining to incarceration of the mentally ill in jails in West Bengal, Assam and the rest of the country came to be finally disposed of by the Supreme Court by an order transferring the case to the various High Courts.[72] Each High Court would register the record pertaining to that state as a PIL and make appropriate orders from time to time. The High Court Legal Aid Committee was to be treated as a petitioner to assist the High Court in the matter of monitoring compliance with the directions made by the Supreme Court in the case. The innovative procedure devised by the Supreme Court deserves comment in that it ensured continued judicial monitoring of the states' record of protecting the rights of their mentally ill citizens even after the case left the Supreme Court.

VII. MISCELLANEOUS

The Supreme Court in Consumer Education and Research Centre v. Union of India[73] declared that the right to health and medical care to protect health while in service or post-retirement is a fundamental right of a worker under article 21 of the Constitution. The court's decision was given in a writ petition filed in the public interest by CERC, an accredited organisation, highlighting in particular the occupational health hazards and diseases of workmen employed in the asbestos industry. After an exhaustive survey of the medical literature and research studies on the topic, the court directed all industries to maintain and preserve health records of every workman up to a minimum of 40 years from the commencement of employment or 15 years after cessation of service whichever was later and to compulsorily provide insurance cover to every worker. The inspector of factories was directed to have each worker examined in the nearest ESI hospital. This was to be followed by a re-examination by the National Institute of Occupational Health whether all or any of them were suffering from asbestosis. If the latter certified any worker to be suffering from an occupational hazard, each such worker would be entitled to compensation of Rs.1 lakh payable by the industry concerned within three months thereof.

A clause in a term policy of the LIC restricting its availability to persons employed in government or quasi-government organisations was struck down by the Gujarat High Court[74] as being arbitrary and discriminatory. This decision was upheld by the Supreme Court in Life Insurance Corporation of India v. Consumer Education and Research Centre, Ahmedabad.[75]

In a PIL by 'Kalyani', a voluntary organisation providing succour to women in distress, the Supreme Court held that a Hindu husband married under the Hindu law cannot by converting to Islam solemnise a second marriage. Such second marriage would amount to committing the offence of bigamy under the Indian Penal Code and would be void as such. The central government was directed to file an affidavit to indicate the steps taken by it to secure a uniform civil code.[76]

On the eve of the Akha Teej festival held every year in Rajasthan in April-May during which certain communities performed child marriages, the petitioner moved a PIL[77] asking the Rajasthan High Court for a direction to stop the marriages which were to be performed in violation of the Child Marriages Restraint Act, 1929. The High Court was satisfied on reading the affidavits filed by the state authorities that the police had not "been sleeping over the matter and has tried to prevent this social evil". The court noticed that "child marriages are being performed every year in contravention of the Act in almost 80% villages of Rajasthan". Striking a somewhat cynical note the court said "… the only irresistible conclusion… is that this custom is most shameful 'social evil' and can be prevented by the society at large and no Government worth the name or its machinery can prevent recurrence of such marriages…"!

The question raised in a PIL in the Supreme Court by Common Cause was whether lawyers could resort to strikes thus paralyzing the working of the courts. The Supreme Court in December, 1994[78] took note of certain interim measures suggested at a meeting of the Bar Council of India, the Bar Association of India, the Supreme Court Bar Association and the Attorney General for India and directed that these would be tried out for a period of six months and the position reviewed thereafter. Significant among these was that strikes should be resorted to only in the rarest of contingencies and as a last resort. It should be left to the individual member to appear in courts without fear of hindrance or any other coercive action against them by the association. It was directed that a lawyer attending courts despite a strike call given by his association will not be visited with adverse civil or penal consequences.

In two writ petitions filed in public interest in the Bombay High Court, the denial to non-government law colleges of grants-in-aid by the Government of Maharashtra was questioned as being discriminatory and a mandamus was accordingly sought. When the High Court allowed the petitions, the State of Maharashtra appealed. The Supreme Court[79] dismissed the appeals and held that while it was clear that several non-government professional engineering and medical colleges received grants-in-aid, recognised private law colleges were singled out for denial and hostile discrimination not based on any reasonable classification. It upheld the affirmative action mandated by the High Court and interpreted this as being consistent with the fundamental right to free legal aid which flowed from a collective reading of articles 21 and 39-A. The corresponding duty cast on the state could not be whittled down by pleading paucity of funds.

VIII. CONCLUSION

A survey can, by its very nature, be only of that which is written and published. That is why a reader of the reported decisions is likely to miss out on what exactly happens in court during the course of a PIL. The proceedings seldom reflect the strategies employed by the court to shape the problem presented to it, to that which is "judicially manageable", the tactics it employs to have accurate information made available by the government, the steps it puts in motion to enforce and implement its directions and the challenges of PIL lawyering to get the court to focus on the issue and carry the case to its logical end. Since the causes in PIL concern not just the litigants before the court but invariably the country at large, there is an imperative need to document the processes and stages through which a PIL progresses so that it becomes a guide to the conduct of PIL in future. The non-availability of reports to the public of commissioners appointed by the court to inquire into specific instances and issues has meant that valuable and largely authentic information that is part of public record is not able to be shared. This affects as much the conduct of PIL by the courts since judicial response in PIL has seldom been consistent or focussed.

The year under review revealed what was possible for individual judges with a clearly defined objective to achieve in PIL. Here, the manner of handling of cases by Kuldip Singh J of the Supreme Court deserves particular mention. Court Hall No.2 where he presided was the 'environment court' and every Friday afternoon the courtroom would be packed to its brim with lawyers and litigants witnessing an involved judge tackle seemingly complex environmental issues. Undaunted by the ever growing size of the paper books or the ingenuity of lawyers to deflect the cases from their course, Kuldip Singh J firmly disallowed pointless adjournments to the government and private litigants alike. It was clear that the court could closely monitor the implementation of its orders and bring the executive to book in the event of disobedience. Intolerance of refusal by the government to come forth with information ensured speedy disposal of cases. This change in the manner of dealing with PIL cases explains why despite several of M.C. Mehta's petitions having been filed over a decade earlier, real progress in them came to be witnessed only in the year under review. In PIL and in the court state agencies charged with statutory duties found an ally and suddenly the purpose of the various environmental legislations appeared achievable.

At the same time, what was judicially manageable and what was not depended considerably upon the approach of the individual judges concerned. The question then was whether this was the beginning of a trend that would remain or a whiff of change that would end with the term of a particular judge.

The discernible trend, however, was that courts shifted the focus from those who asked the questions to the questions themselves. PIL made it possible to make those in high places in public life answerable for their actions.

Endnotes

*Advocate, Supreme Court.

[1] 58 (1995) Delhi Law Times 800 at 811.

[2] A full bench of the Madras High Court, however, refused to recognise the *locus standi* of the Civil Liberties Council, an association of public-spirited individuals, to question in a PIL the resolution of the Tamil Nadu Legislative Assembly convicting and sentencing an editor of a Tamil weekly for breach of privilege. Terming it as "private injury" actionable only at the instance of the injured persons, the High Court in *Civil Liberties Union v. Government of Tamil Nadu*, 1995 I MLJ 59, held that the petitioners were third parties and could not raise the dispute particularly when the editor had himself filed a substantive petition seeking the same relief. In *Vangala Narasimhacharyulu v. State of A.P.*, 1995 (1) ALT 371, a professor of Physics was permitted by the Andhra Pradesh High Court to successfully challenge the validity of alienation of temple lands by private negotiation rather than by way of public auction. The Gujarat High Court in *Consumer Education and Research Society, Ahmedabad v. Union of India*, AIR 1995 Guj 133 recognised the *locus standi* of the petitioners, the CERS and the Centre for Environmental Law to question the decision of the Gujarat Government to reduce the area comprising the Narayan Sarovar Sanctuary. A medical professional with active involvement in public life was allowed to question the decision of the Bangalore University to fix the dates for the M.B.B.S. exams in close proximity to the earlier exams – *Dr.V. Ambujakshi v. Bangalore University*, AIR 1995 Kar 369. In *L. Sachday v. State of Gujarat,* 1995 ACJ 714 a letter from an advocate regarding the action to be taken by police officers under the Motor Vehicles Act, 1988 in case of death or bodily injury was treated as a PIL and directions issued.

[3] (1995) 2 BLJR 754.

[4] AIR 1995 Mad 78.

[5] *Id.* at 87. The Advocate General resigned on the very day the High Court pronounced its order thus rendering the writ petition infructuous. Later in *K. Subramanyam v. Ponusamy*, AIR 1995 SC 2113, the Supreme Court, in a petition by the Advocate General, expunged the observations of the High Court, on merits.

[6] *Shree Swami, Advocate v. State of Rajasthan*, AIR 1995 Raj 69.

[7] (1995) 6 SCC 363. In *Afzal v. State of Haryana*, (1995) Supp 2 SCC 388, the advocate who filed the petition for *habeas corpus* on behalf of the family of two abducted minor children, later changed his version in an enquiry ordered by the Supreme Court in order to shield the police inspector responsible for the abduction. This was deprecated by the Supreme Court and a notice for contempt issued to the advocate.

[8] 1995 (7) SCALE 202.

[9] *Id.* at 205.

[10] (1995) 1 SCC 391.

[11] *Id.* at 393-94.

[12] *Id.* at 397.

[13] Response to requests for a CBI enquiry has not been uniform. The Bombay High Court turned down such a request on the ground that the averments in the PIL petition were vague, unspecific and indefinite – *Yeshwant v. State of Maharashtra*, 1995 Cri LJ 2228.

[14] *Sarwan Singh Lamba v. Union of India*, (1995) 4 SCC 546 at 560. In *Rajan Joseph v. State of Kerala*, 1995 (1) KLT 25, the Kerala High Court dismissed a PIL challenging the decision to

construct a sub-way stating that PIL shall not be misused to prevent developmental activities. In *Sri Krishnapuri Boring Road Vyapari Sangh v. State of Bihar*, (1995) 1 BLJR 269 the Patna High Court refused to entertain a PIL by occupiers of unauthorisedly constructed buildings questioning the demolition saying that any such direction would perpetuate an illegality. The Delhi High Court in *Madarsa Road Residents Association v Lt. Governor,* AIR 1995 Del 195 gave directions at the instance of the residents to the municipal authorities to take steps to regulate traffic in a busy residential locality.

[15] *President, Mahavidyalaya Shiksha Sudhar Sangharsh Samiti v. State of Bihar*, AIR 1995 Pat 7.

[16] Following the decisions of he Supreme Court, the Madras High Court in *A.D.C. Guruswamy v. Union of India*, 1995 1 MLJ 655 refused to entertain a PIL seeking a direction to the government to fill up two vacancies of judges in the High Court and an interim injunction restraining the government from giving effect to the transfer of five judges of the Madras High Court to other High Courts.

[17] (1987) 1 SCC 124.

[18] *Supra* note 14.

[19] *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.

[20] *Sub-Committee on Judicial Accountability v. Union of India*, (1991) 4 SCC 699.

[21] See. S. Muralidhar, "Public Interest Litigation", XXX *ASIL* 431 at 433 (1994).

[22] *C. Ravichandran Iyer v. A.M. Bhattacharjee*, (1995) 5 SCC 457 at 476.

[23] *Id.* at 481.

[24] *K.V. Mallikarjuna Rao v. Dept. of Home*, AIR 1995 AP 359.

[25] *Id.* at 361.

[26] *N.P. Amrutesh v. State of Karnataka,* AIR 1995 Kar 290.

[27] *Id.* at 324.

[28] (1992) 1 SCC 119.

[29] *Ibid*.

[30] *All India Judges' Association v. Union of India*, (1993) 4 SCC 288 at 317.

[31] *All India Judges' Association v. Union of India*, 1995 (5) SCALE 634.

[32] *All India Judges' Association v. Union of India*, 1995 (2) SCALE 374.

[33] *All India Judges' Association v. Union of India*, 1995 (6) SCALE 581.

[34] (1995) 6 SCC 127.

[35] *Niyamavedi v. Raman Srivastava*, 1995 (1) KLT 206.

[36] *Director, CBI v. Niyamavedi*, (1995) 3 SCC 601 at 603.

[37] *Anukul Chandra Pradhan v. Union of India*, 1995 (7) SCALE SP 6. This case proceeded simultaneously with the case of *Vineet Kumar Narain v. Union of India* which concerned the investigations by the CBI into the '*Hawala*' transactions in which several persons in high position in public life and in government were involved.

[38] 1995 Supp (3) SCC 382.

[39] *Shiv Sagar Tiwari v. Union of India*, 1995 (6) SCALE 619. In another instance involving public monies, the High Court of Bihar at Patna found in a PIL that there had been an unauthorised publication of an advertisement inviting applications for posts of lecturers in government schools in Bihar. It directed refund of the application money collected – *Dr. Indiwar Kumari v. State of Bihar*, (1995) 1 BLJR 150.

[40] *Indian Council for Enviro-Legal Action v. Union of India*, 1995 (2) SCALE 584.

[41] *Indian Council for Enviro-Legal Action v. Union of India*, (1995) 3 SCC 77.

[42] 1995 (3) SCALE 737.

[43] *Ajay Singh Rawat v. Union of India*, (1995) 3 SCC 266.

[44] See *Consumer Education and Research Society, supra* note 2.

[45] *Ibid*.

[46] See generally the Supreme Court's order in *Tarun Bharat Sangh Alwar v. Union of India*, 1992 Supp (2) SCC 445 and 1993 Supp (1) SCC 4 which concerned the carrying on of mining activity within the Sariska Wildlife Sanctuary.

[47] 54 (1994) DLT 190; see also S. Muralidhar, *supra* note 21 at 438.

[48] *Maneka Gandhi v. Union Territory of Delhi*, 57 (1995) DLT 571.

[49] 1995 (7) SCALE SP 1.

[50] *Vellore Citizens Welfare Forum v. Union of India*, 1995 (5) SCALE 592.

[51] *Samsad Khan v. Agrawal Graphite Industries*, 80 (1995) CLT 588.

[52] *Indian Council for Enviro-Legal Action v. Union of India*, 1995 (6) SCALE 578.

[53] *M.C. Mehta v. Union of India*, 1995 (4) SCALE 789.

[54] *M.C. Mehta v. Union of India*, 1995 (7) SCALE SP 7.

[55] *Srikar Kumar Rath v. State of Orissa,* 80 (1995) CLT 859.

[56] *Bishnu Priya Bhoi v. State of Orissa*, 80 (1995) CLT 894. Both cases were heard and decided on 20.10.1995 by a bench of D.P. Mohapatra acting CJ and R.K. Dash J.

[57] *Id.* at 898.

[58] *Id.* at 896.

[59] 1995 (2) SCALE 452.

[60] *Pt. Parmanand Katara v. Union of India*, (1995) 3 SCC 248.

[61] *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743 at 750.

[62] 80 (1995) CLT 149.

[63] *Shaheen Welfare Association v. Union of India*, 1995 (6) SCALE 419.

[64] These were directed to be set up by the Supreme Court in its judgment in *Kartar Singh v. Union of India*, (1994) 3 SCC 569 while upholding the constitutional validity of the Terrorist and Disruptive Activities (Prevention) Act, 1985. This Act made it virtually impossible for a person accused of an offence under it to be granted bail. This resulted in considerable increase in the

undertrial population in the jails in the country.

[65] *Shaheen Welfare Association v. Union of India*, 1995 (7) SCALE SP 7.

[66] *Hussainara Khatoon v. Home Secretary, Bihar*, (1995) 5 SCC 326.

[67] *Hussainara Khatoon v. Home Secretary, Bihar*, (I to VI), (1980) 1 SCC 81, 91, 93, 98, 108 and 115 – orders made between 12.2.1979 and 4.5.1979. The case has been celebrated in PIL discourse for its path-breaking judicial activism in the area of human rights. It generated considerable juristic interest among legal scholars. [See Baxi, Upendra, "The Supreme Court Under Trial: Undertrials and the Supreme Court" in (1980) 1 SCC (*Jour*) 35; Singh, T.N., "The Hussainara Case: Some Socio-legal Aspects of Pre-trial Detention" in (1980) 1 SCC (*Jour*) 1].

[68] *Supra* note 66. Baxi points out that Justice Bhagwati's leading opinion in *Hussainara I* "burns with red-hot anger". He characteristically states the issue thus:

> What is the real issue? It is not whether articles 14 and 21 should be interpreted this or that way. It is rather: how best can we secure reforms in jail administration? The question has been sturdily left in the lap of the legislature and executive for well over a quarter of a century with startlingly uncivilised and inhumane results… Should the Court continue to be a passive agency… should it assert its power to redeem, or at any rate, ameliorate their plight?… And if you say that the Court ought to begin doing the latter, may I ask how can it do so except in the manner in which Justice Bhagwati and his colleagues have been doing it? (see Baxi, i*d.* at 37).

[69] 59 (1995) DLT 428.

[70] Also see S. Muralidhar, *supra* note 21 at 452.

[71] (1995) 4 SCC 591.

[72] *Sheela Barse v. Union of India*, (1995) 5 SCC 654. Also see *supra* note 21 at 443.

[73] (1995) 3 SCC 42.

[74] *CERC v. LIC*, 1995 (1) GLH (UJ) 3.

[75] (1995) 5 SCC 482.

[76] *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

[77] *Smt. Sushila Gothala v. State of Rajasthan*, AIR 1995 Raj 90.

[78] *Common Cause v. Union of India*, 1995 (1) SCALE 6. In a related development the Supreme Court considered the fallout of the violence witnessed during the strike resorted to by lawyers of the Allahabad High Court as a consequence of which the Chief Justice of that the High Court had to seek the help of the army as well as the police. In *Supreme Court Bar Association v. State of U.P.* 1995 (2) SCALE 74 at 241 the Supreme Court sought a CBI report on the incidents and monitored the progress of the inquiry.

[79] *State of Maharashtra v. Manubhai Prajibhai Vashi*, (1995) 5 SCC 730.