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COURTS AND ACCOUNTABILITY: PUBLIC INTEREST LITIGATION IN THE INDIAN HIGH COURTS

Jill Cottrell*

In a society aspiring to be democratic, or which claims to be governed by the rule of law, no one (mark “no one,” meaning thereby even the judiciary) can exercise its power without there being corresponding accountability — Ravani J. in *Surat M.C. v. Rameschandra*¹

Since the early 1980s the Indian Supreme Court has developed a bundle of procedures to be used in cases intended to represent the interests of the voiceless poor, which depart considerably from the classic common law model of the gladiatorial dispute between affected parties fought out before a passive judicial umpire.² At its core is an expanded concept of locus standi — embracing organisations or individuals which are not even a segment of the affected classes, and who would previously have been regarded as busy-bodies. Actions may be begun informally, even by letter addressed to the Court, and not necessarily supported by affidavit. The Supreme Court itself may appoint individuals or organisations to carry out factual investigations, or may in effect require the state to produce evidence. Orders made may go beyond the formal parties to the litigation, and are more likely to involve future action rather than backward looking remedies, and respondents may be required to report progress in implementation to the Court. The Supreme Court’s original jurisdiction is based on Article 32 of the Constitution — for the enforcement of fundamental rights — and these “public interest litigation” (PIL) cases must be anchored to this, although an expansive view of particular human rights provisions has often been taken, and

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1. AIR 1986 Guj. 50, 52.

2. See generally “Taking Suffering Seriously” in Baxi ed., *Law and Poverty* (Bombay, Tripathi, 1988).

remedies have been tailored to the circumstances going far beyond what courts are accustomed to award. The Court has sometimes suggested that this is not really an adversary form of litigation, since it is directed towards realising rights to which the authorities are already committed under the Constitution and legislation. In many countries one might expect these cases to be taken to a complaints procedure — or to an ombudsman. But in India, at the federal level, there is no ombudsman, and plans to create one have not tended to envisage so much a remedy for maladministration as one for corruption. Chinnappa Reddy, J., of the Supreme Court said: “It is not the Judiciary, but the Parliament and the Executive that have failed the people.”³

At the High Court level the relevant article — 226 — reads:

every High Court shall have power...to issue to any person or authority, including in appropriate cases any Government... directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III [fundamental rights] and for any other purpose.

This is evidently wider than article 32; in recent years the Supreme Court has on a number of occasions refused to entertain writ petitions, saying that they ought to be taken to the High Court first.

This paper is based on 114 PIL or “near PIL” cases in the High Courts. Most of them are to be found in the law reports, but a few are derived from other sources. The following table shows the cases broken down by state and broad topic:

3. Inaugural address to Seminar on “Socialism, Constitution and the Country Today” AIR 1983 Jour. 33, 39.

Concern	State ⁴																	
	AP	As	Bh	De	Gj	HP	KT	JK	Ke	MP	Ma	Or	PH	Rj	TN	UP	WB	
Environment	8	1	1	1	1				1		1				2			
Pub.health	14	1			1	1	1			2			7			1		
Drink/drugs	3					2	2		1									
Presn.bldgs.	2						1	1										
Education	9					1			1	1	1		1		2	2		
Pub facils.	9	1				1				1	1		5					
Villages	3											1	2					
Police	2		1	1														
Crime	2								1								1	
Prisons	5	1				1				1	1				1			
Judy/courts	4			1									3					
Squatters	1																1	
Censorship	6									2	2		4					
Politics	8	2								2		1			1	1		
Foreign rels	1														1			
Strikes	1															1		
Pub. order	1														1			
Workers	3				1								2					
Harijans	1												1					
Women	1												1					
Children	1										1							
Indiv.Compn.	5				1	1			2				1					
Admin.	18	1			3	2	2	1	3	1			4				1	
Misc.	7				1								1	3			2	
Total	114	8	1	1	2	7	8	6	4	6	7	10	3	1	34	4	4	10

There is a definitional problem. Professor Baxi would confine use of the concept (social action litigation, he terms it) to cases genuinely on behalf of the oppressed classes.⁵ On this basis many of the cases looked at here would not merit that “accolade” — but that is one of the points of the paper. I want to explore how far litigants seem to have been using the High Courts for the same sorts of purposes as those served by Supreme Court PIL litigation. For this purpose, it seems to me, it is worthwhile, perhaps necessary, to look at cases in the High Courts which seem to be inspired by PIL, or by the same sorts of impulses as have led to PIL, in the Supreme Court. Not every PIL case has every PIL

4. Andhra Pradesh, Assam, Bihar, Delhi, Gujarat, Himachal Pradesh, Karnataka, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab & Haryana, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal.

5. Baxi, *op. cit.* at p. 398n.

characteristic, there are degrees of "PILness" as it were. The majority of these cases were either held by the court, or argued unsuccessfully by the petitioner, to be PIL. Some have been included because they have PIL characteristics to some extent, either because they have been started by means of a letter, or they involve an expanded concept of locus standi, or because of the nature of the orders made, although they may not have been described as "PIL" by court or advocate.

The variations between states in this Table are of limited significance. The superficially astonishing figures for Rajasthan reflect partly that there has indeed been what seems to have been a largely home-grown PIL movement since the end of the 1970s, under which one lawyer in particular, often in collaboration with one particular local politician, has bombarded the High Court (especially in Jodhpur) with petitions; it also reflects his publication of a number of petitions in book form.⁶ The Table reflects only the cases initiated by the High Courts, but a more complete picture would be obtained by looking at cases in the Supreme Court also. Whether the petitioner chooses to commence the action in the High Court or the Supreme Court will depend upon a number of factors. One would naturally expect more cases to go to the Supreme Court in states more remote geographically from New Delhi (the only place where the Supreme Court sits). Possibly some organisations or individuals who bring PIL petitions are more oriented toward Delhi (or may even be based in Delhi, even though they litigate about issues in distant states). The highly publicized Supreme Court cases have led to many petitions being brought there when they could equally have been brought in the State High Court. Some High Courts have been more positive in their reactions to PIL than others, as we shall see, and this must affect the choice of venue by petitioners. The paucity of cases from Bihar in the Table is especially misleading. Bihar has been a byword for official lawlessness, and

6. M. Mridul, *Public Interest Litigation: A Profile* (Jaipur, Bharat Law House, 1986).

several of the most horrifying revelations made through PIL in the Supreme Court have concerned that State.

The PIL phenomenon will become clearer if we look in more detail at one case: in *Citizens Action Committee, Nagpur v. Civil Surgeon, Mayo Hospital*,⁷ an organisation of citizens brought petitions against various public authorities complaining of the poor condition of roads, congestion, poor public sanitation and the condition of three government hospitals. The court appointed two committees to report to it, and these supported the allegations of the petitioners. After consultation with the hospital authorities the court instituted an Investigative and Remedial Measures Suggestive Committee. With regard to thirty-six areas of the city said to have inadequate roads, water and drainage, the State Government was directed to appoint a Committee, and to issue directions to the various bodies concerned to provide the missing facilities. The Electricity Board was directed to provide lighting; the cleaning of certain ditches was ordered; the Public Works Department was to repair the hospital compounds; the State was directed to take steps to provide thirty-five more paediatric beds. On a number of points the authorities had assured that steps were being or would be taken and the court therefore felt it unnecessary to make any order, and at some points the court advised rather than ordered a course of action. This case is not typical of the reported PIL cases in the High Courts; it resembles far more some of the Supreme Court cases.

Without field research, comparison between the demands being addressed to the Supreme Court and to the High Courts is effectively impossible. Many of the applications made to the Supreme Court are in the form of letters, and these are weeded out by a committee. Only those which reach a certain threshold in terms of human rights issues, and which raise the vulnerability of the section of the community affected, ever get to the stage of a hearing. As a result, very few litigated cases are completely unsuccessful in the Supreme Court. The boundaries of PIL are

7. AIR 1986 Bombay 136.

therefore much more likely to be set in the Supreme Court in appeals from the High Courts, but thus far there have been very few such appeal cases. Partly this is because of the relatively recent development of PIL in the High Courts, partly because there is no appeal as of right in such matters (and High Courts have quite frequently declined to certify quite important cases as justifying appeal to the Supreme Court), and no doubt because unsuccessful petitioners at the High Court level have no stomach, or funds, for the fight in the Supreme Court. There have been a very few cases in which the Supreme Court has taken the view that a High Court has gone too far — in asserting its power by ordering the government in one case to set up a committee to consider legislation,⁸ and in another by imposing an interim injunction against the transmission of a TV series.⁹

We turn to the reactions of the High Courts themselves. There is a distinction between permitting someone to bring an action, and actually being able to give them a remedy. The Delhi High Court had no difficulty with the notion that social action groups should bring a suit intended to prompt investigation into the riots after Mrs. Gandhi's assassination, but found either no power or no necessity to order the authorities to take any more steps than they had already taken.¹⁰ The Chief Justice of Himachal Pradesh was evidently an enthusiast for PIL — and even accepted an anonymous letter from "Citizens of Simla."¹¹ During the 1980s, cases received a mixed reception in Rajasthan, but evidently GM Lodha J was happy that "poor, ignorant, downtrodden, suffers of injustice have been allowed to enter 'Temples of Justice' without formal dress, flowers, rituals or chanting of mantras";¹² but the same year another High Court Judge in the state observed, "We do not want to encourage such sort of litigation, otherwise the traditional litigation will suffer."¹³

8. *State of Himachal Pradesh v. Parent of Student of Medical College*, AIR 1985 SC 910.

9. *Odyssey v. Lokvidayana Sanghatana* AIR 1988 SC 1642.

10. *PUDR v. Min of Home Affairs* AIR 1985 Delhi 271.

11. 1983 ILR (Himachal Pradesh) 5.

12. *Citizens of Bundi v. Municipal Board* AIR 1988 Raj 132, 135.

13. *Rajasthan Kisan Sangha v. State* AIR 1988 Raj 10, 16.

Not every court seems to have been presented with promising cases — which accounts for the fact that the High Court of Jammu and Kashmir threw out all the reported cases they were asked to treat as PIL.

Like the Supreme Court, the High Courts have worked their way only gradually to an expanded concept of locus standi. At least one judge in Andhra Pradesh was arguing for an broad approach as long ago as 1972 and 1974, before the appearance of any of the Supreme Court cases usually cited as being the seeds of PIL.¹⁴ But in 1980 the same Court insisted, “The mere fact that the petitioner is a citizen of India or the President of the Indian Fundamental Rights Association does not confer any right on him to seek relief under art. 226.”¹⁵ For many lawyers and courts, the first major breakthrough in the Supreme Court was the *Judges’ Transfer* case in 1981,¹⁶ but even before that case, the Gujarat High Court held that the Consumer Education and Research Centre had locus standi to challenge the winding up of an inquiry into a dam collapse.¹⁷

The High Court cases seem to fall into certain clusters, sometimes coming largely from one state. Some of the cases would undoubtedly receive Supreme Court blessing as “valid” PIL — in the sense that they are in the interests of classes which would normally have no effective access to the courts. This would include the Andhra Pradesh case of Harijan pig breeders fighting the impact of legislation which would have meant the destruction of their pigs without efforts having been made to improve their management methods.¹⁸ There have been several cases on treatment of prisoners: in a case from Madras petitions were filed by a prisoner and on the instructions of duty counsel, complaining that prisoners were being constantly remanded in custody without

14. *T Narayana Reddy v. Govt. of AP* ILR 1972 AP 955; *Warangal CC v. Director of Marketing* AIR 1975 AP 245 on both of which Ekbote J sat.

15. *K.R.K. Vara Prasad v. UoI* AIR 1980 AP 243, 246.

16. *S.P. Gupta v. UoI* AIR 1982 SC 149.

17. *CERC v. State* (1981) XXII Guj. L.R. 712, citing the earlier *Fertilizer Corporation Kamgar Union v. UoI* AIR 1981 SC 344.

18. *A.P. Adimajati Sewa Sangham v. Guntur M.C.* AIR 1987 AP 193.

ever being produced in court;¹⁹ two cases involved the payment of wages to prisoners for work. In Kerala it was held that failure to pay a reasonable wage amounted to bonded labour contrary to art. 23 of the Constitution, while in Andhra Pradesh the High Court disagreed with this analysis — but reached a not dissimilar conclusion via the right-to-life article (21).²⁰ The same issue was one of several in the Goan case of *Inacio*.²¹ Other cases have concerned the eviction of squatters,²² the running of a children's home,²³ and allegations of police brutality, or inactivity.²⁴ There have been several involving environmental or public health issues — for example the effect of quarrying in the Shivalik Hills,²⁵ pollution of lakes in Udaipur,²⁶ drainage in Sardarnagar in Gujarat,²⁷ sanitary conditions in Simla,²⁸ and the suggestion that butter imported under EEC aid programmes was contaminated with Chernobyl fallout.²⁹

However, the overall impression is that litigants have been using — or trying to use — the High Courts for purposes which are more parochial, more middle-class, more paternalistic and, in a number of ways, more overtly political than has been permitted in the Supreme Court. To some extent, this reflects just the sorts of cases which the Supreme Court would encourage to go to the High Courts. A broad PIL strategy would suggest that the Supreme Court should be used where it is desirable to obtain the articulation of a principle that could then be used in the lower courts, or where an issue is of national importance. It is also

19. *Elumalai v. State* 1984 ILR (1) Mad. 312.

20. *Re Prison Reforms, Enhancement of Wages* AIR 1983 Ker. 261; *Poola Bhaskaran Vijayakumar v. State* AIR 1988 AP 295.

21. See also *Nawab Kishore Thakur* 1984 ILR (Him.) 381.

22. *Re No. 57 Block Bastuhara Committee* AIR 1987 Cal. 122; *Ram Prasad Yadav v. Chairman Bombay Ports Authority* 1989 (1) SCALE 713.

23. *Sheela Barse v. Sec. Children's Aid Society* 1987 1 SCJ 584.

24. *Re Inquiry into Gang Rape* 1988 20 IJR (Gauhati) 92, *Rajasthan Kisan Sangha* above n. 13, *State of West Bengal v. Sampat Lal* AIR 1985 SC 195.

25. *Kinkri Devi v. State* AIR 1988 HP 4.

26. *Balwant Singh Mehta v. State* Unrep (see Mridul for petition).

27. *Janki Nathubhai Chhara v. Sardarnagar* AIR 1986 Guj. 49.

28. *Yoginder Lal Sharma v. MC Shimla* 1983 ILR (Him) 457.

29. *Sivarao Shantaram Wagle v. UoI* AIR 1988 SC 952.

sometimes argued that one of the values of PIL may be the publicity attaching to the litigation process, and this will no doubt be much greater if the court is the Supreme Court. Thus after a number of prominent prison cases in the Supreme Court, concerning mostly Bihar, or Tihar jail in Delhi, it is not surprising to find several High Court cases focusing on local jails.³⁰ Cases concerning inadequate drainage in a particular town, open manholes in Jodhpur or Jaipur,³¹ pollution of a local water supply³² and so on, would seem appropriate for the local High Court. The same is true of a number of cases concerning the use of parks or designated recreation areas for other purposes.³³ Among other cases concerning state governments have been one about the licensing of the sale of arrack in polythene bags (allegedly a health hazard)³⁴ or the failure of the same state government to check illegal tree felling.³⁵

By "political" I mean more overtly party political or concerned with government policy. Sometimes one might say that litigants were "trying it on" — and have been given short shrift by the court. A blatant example was the attempt in Calcutta to ban the Koran as tending to stir up communal disharmony.³⁶ Attempts to persuade the Madras High Court to direct the Government of India to intervene in Sri Lanka, or that of Andhra Pradesh to order the proclamation of Martial Law,³⁷ or the consideration of whether to impose President's Rule,³⁸ or to get mandamus in Kerala to compel the implementation of an election manifesto³⁹

30. See notes 21-22 above, plus *Ranchod v. State* (MP) 1988 16 IJR 147.

31. *Vijay Mehta v. MC Jodhpur* (for petition see Mridul), *Legal Aid Clinic, University of Rajasthan, Jaipur* — see Kagzi, *The Present Constitutional Issues and Views* (New Delhi, Metropolitan, 1987) p. 203.

32. *Sampat Raj Jain v. Raj. State Board for Prevention of Water Pollution* (see Mridul).

33. *Citizens of Bundi*, above n. 12, *T. Damodhar Rao v. SO, MC Hyderabad* AIR 1987 SC 171, *SN Rao v. State of Maharashtra* 1988 1 SCJ 566, *Calcutta Youth Front v. State* 1986 (2) Cal. LJ 26.

34. *George Mampilly v. State* AIR 1985 Ker. 24.

35. *V.M. Abraham v. State* 1987 (1) Ker. L.T. 57.

36. *Chadanmal Chopra v. State* AIR 1986 Cal. 104.

37. *Chinta Subba Rao v. Supreme Commander* AIR 1980 AP 172.

38. *Dhronamraju Satyanarayana v. N.T.Rama Rao* AIR 1988 AP 69.

39. 1988 (2) Ker. L.T. 209.

were all disposed of in a fairly summary way. A number of cases alleging corruption have been dismissed, as there are other avenues for redress such as the state ombudsman.⁴⁰ The Allahabad High Court refused to order the government to ban strikes by certain employees.⁴¹

But not all politically motivated cases have been dismissed. A striking example also comes from Andhra Pradesh: the High Courts found a number of allegations against the Chief Minister proven.⁴² And a number of cases have been brought by politicians. In the *Judges' Transfer* case, the Supreme Court said: "We must be careful to see that the member of the public who approaches the court in cases of this kind is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration."⁴³ But are politicians to be deprived of a right to bring PIL cases? In the *Dhronamraju Satyanarayana* cases, the Andhra Pradesh High Court held that one could not throw out serious allegations just because they were filed by a political rival, and for political motives. In Madhya Pradesh the leader of the opposition in the state brought a petition alleging the improper conduct of a lottery, and that it was protected by powerful people.⁴⁴ The petition was successful despite the court's recognition that it had political overtones. Mr. Vijay Mehta, who has brought a number of cases in Rajasthan, is a secretary of his local Communist Party. But the High Court of Jammu & Kashmir did observe in one case that "a tendency has developed among some busy-bodies and meddlesome interlopers to boost their political image, by moving the court for what is called a public interest litigation...."⁴⁵

40. E.g., *P.N. Dubev v. UoI* AIR 1989 MP 225, *S.S. Banja Deo v. Janaki Ballav* 1986 61 Cuttack L.T. 52.

41. *Anand Mohan v. UoI* 1984 All. L.J. 1293.

42. *Dhronamraju Satyanarayana v. N.T.Rama Rao* AIR 1988 AP 144; the court then adjourned the case so that all affected parties might be before it for the final order, but I have not been able to find that stage reported.

43. AIR 1981 SC at p. 195.

44. *Kailash Joshi v. MP* 1989 Jab.L.J. 127.

45. *Bhim Singh v. D.D. Thakur* 1982 XV J & K LR 464 at p. 487.

By “middle-class” I have in mind, for example, the cases concerning the use of land previously used, or zoned, for parks or similar purposes, for residential or commercial uses, the best known being the use of part of Calcutta zoo’s land for a hotel.⁴⁶ The ragging of freshers at university,⁴⁷ the demolition of the elegant Attara Cutcherry housing the High Court in Bangalore,⁴⁸ the demolition of sanitary facilities at railway stations,⁴⁹ the failure to provide state funding for private law schools,⁵⁰ the inadequacy of the telephone service,⁵¹ the failure to provide adequate electric power to the High Court or to allocate it sufficient funds⁵² or the institution of a one-way system on a road leading to the High Court,⁵³ not to mention the challenge to a statue of Gandhi on the basis that it made him look “depressed”⁵⁴ could all be characterised as representing middle class concerns rather than those of the weaker sections.

There is inevitably something rather paternalistic about the whole PIL movement, but some of the High Court cases have been, to my mind, especially so. Cases in Himachal Pradesh, requiring the Government to comply with its own rules about siting outlets for alcoholic drinks where the weak-willed will not be tempted or the sensitive offended, are one example.⁵⁵ There have been cases trying to stop television programmes because they would stir up communal harmony, or encourage superstitious beliefs⁵⁶ to stop the importation of foreign films or the screening

46. *Sachidanand Pandey v. State* AIR 1987 SC 1109.

47. *State of Himachal Pradesh v. Parent of Student of Medical College* AIR 1985 SC 910.

48. *B.V. Narayana Reddy v. State* AIR 1985 Kant. 99; the Court quoted the *Hindu*: “elitist exercise in false nostalgia and anachronistic sentimentality” — at p. 102.

49. *Ramanthsekhar v. Pando Padhaya* AIR 1987 Bom. 98.

50. *Manubhai Pragaji Vashi v. State* AIR 1988 Bom. 296.

51. *Vijay Mehta v. UoI* (see Mridul).

52. *CC Jain v. State* (Mridul) and *Vijay Mehta v State* (*ibid.*) respectively.

53. *Ram Sahai Verma v. State* AIR 1989 MP 334.

54. *Babubhai Jashbhai Patel v. State* AIR 1988 Guj. 1.

55. *Citizens of Simla v. State* 1983 ILR (Him) 5 and *Himachal Pradesh Nashabandi Parishad v. State*, *ibid.* p. 493.

56. The former was *Ramesh v. UoI* 1988 19 IJR 364 — the programme was *Tamas* (shown in 1990 on British TV); both the HC and the SC rejected this characterisation. The second case was *Odyssey* above n. 10.

of television programmes undermining Indian culture, or the broadcasting of vulgar songs, or the sale of foreign pornography.⁵⁷ Most of these have been unsuccessful (in one case unsuccessful only in the Supreme Court after succeeding in the High Court)⁵⁸ or the outcome is unknown. However, the Madras High Court did overturn the decision of the Board of Film Censors — partly on the grounds that the film to which the Board had given a license insulted Dr. Ambedkar and the “backward classes.”⁵⁹

Few of the High Court cases involve the scope of the famous Supreme Court cases, or their innovative quality of procedure. However, quite a number have been started by the use of letters — or even a telegram. A few have involved the rights of individuals rather than groups, but have had a PIL quality in that they have been started by a letter — or even by the Judge who read a letter in the press!⁶⁰ Another example of judicial initiative was in Assam: the CJ read in his morning newspaper an account of gang rape by police and initiated a writ petition on this basis.⁶¹ Again, a few have involved the sort of fact-finding initiative taken in the Supreme Court. For example, a Court directed the State Government to set up a committee to look into the impact of mining.⁶² We have already seen that an elaborate range of issues was inquired into by a committee appointed by the court in the Nagpur case.

The most consistently successful cases have involved prisoners' rights, and several concerning the rights of workers have also achieved a degree of success. Other notable cases include that in which the Andhra Pradesh government was directed to identify alternative sites for pig owners, to help the owners to breed them

57. All these were in Rajasthan: the first two, *Vijay Mehta v. UoI* both in 1986, see Mridul, the third *Abeer Chand v. UoI* (*ibid.*) and the last *Rajasthan Progressive Writers Association* in 1983 (*ibid.*) — this petition was unsuccessful.

58. *Odyssey* above n. 10.

59. *P. Jagajeevan Ram v. GoI* AIR 1989 Mad. 149.

60. *R.K. Martiyani v. Regional Provident Fund* 1983 (2) XXIV Guj. L.R. 927 and *Ram Pyari v. UoI* AIR 1988 Raj. 124; see also *Kochupennu Lakshmi v. Chairman Kerala State RTC* AIR 1984 Ker. 97, *Thressia v. Kerala SE Board* 1987 (1) Ker. L.T. 492, 1987 (2) K.L.T. 934.

61. *Re Inquiry into Gang Rape* above n. 26.

62. *Kinkri Devi v. State* AIR 1988 HP 4.

there, to institute a system for tagging licensed pigs, and to educate pig owners;⁶³ the Kerala case in which the decision to permit packaging of arrack in polythene bags was struck down;⁶⁴ and the Rajasthan cases in which the governments were ordered to stop the practice under which Harijans could not enter a temple without purification,⁶⁵ or to cover manholes,⁶⁶ or to provide enough traffic police.⁶⁷

The scope of possible remedies in PIL is somewhat imprecise. While there is little difficulty in ordering a government to desist from a course of action, many cases ask for something much less simple. Indeed, that is one of the advantages of PIL — it is not simply a negative procedure. In many cases, as in classic administrative law, the court can only interfere if a decision has been arbitrary or in bad faith; the famous Bombay pavement dwellers case — *Olga Tellis* — in the Supreme Court, although it held that “life” under article 21 includes “livelihood” also held that there is no right to live on pavements and that all the Court could do was to ensure people were given proper notice to leave. So in the High Court it was held that traders’ huts could not be removed without a hearing;⁶⁸ squatters must be given notice before eviction;⁶⁹ planning decisions could only be interfered with if arbitrary.⁷⁰ In this connection I have some doubt about the action of the Madras Court in apparently substituting its judgment for that of the Board of Film Censors.⁷¹

Some of the most difficult cases centre on the question how far the court can order government to spend money. If the government is being ordered to implement existing legislation that is one thing: in Rajasthan the court suggested it had the

63. Above n. 20.

64. Above n. 36.

65. *Surya Narayan Choudhary v. Rajasthan* RLW 1988 (2) 31.

66. Above n. 33.

67. *Vijay Mehta v. State* (Mridul).

68. *Nehru Marg Cabin Association v. Modasa Nagar Palika* 1988 VIII (1) Guj. LH 289.

69. *Re No. 57 Block Bastuhara* above n. 24.

70. E.g. *Sachidanand Pandey* above n. 48.

71. *P. Jagajeevan Ram*, above n. 61.

alternative of repealing the legislation if it wished.⁷² In *Umed Ram Sharma* the Supreme Court said it was acceptable (just) to require the state government to consider favourably the expenditure of money.⁷³ The Rajasthan High Court ordered the government to make available money for a generator for the High Court itself (and the state tried unsuccessfully to appeal to the Supreme Court).⁷⁴ The Bombay High Court ordered the railway authorities to reinstate demolished lavatories at stations,⁷⁵ and the state government's blanket policy not to provide grants to non-government law colleges was held unconstitutional.⁷⁶

Traditionally art. 226 had not been used for financial compensation. In PIL the Supreme Court has been cautiously moving on this point. It said that compensation might be awarded for breach of fundamental rights if "the infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been very unjust to the person whose fundamental right was violated to require him to go to the civil court for claiming compensation."⁷⁷ The High Courts have perhaps been less cautious. One or two cases have been really tort or trust cases riding on the art. 226 vehicle.⁷⁸ In the *Gang Rape* case, the Chief Justice awarded compensation to the affected women on the basis of the prima facie evidence produced by the Inspector General of Police.⁷⁹ And the Madras High Court ordered the state to pay compensation (recommended by the Collector) amounting to Rs 3 million to Sikh victims of the riots in the wake of Mrs. Gandhi's assassination — on the basis that the authorities should have taken steps to protect their property (as they had their persons).⁸⁰

72. *L.M. Koolwal v. State* AIR 1988 Raj. 2.

73. 1986 1 SCR 251.

74. *CC Jain v. State* above n. 54.

75. Above n. 51.

76. Above n. 52.

77. *M.C. Mehta v. UoI* AIR 1987 SC at p. 1091.

78. E.g. *Jaram Singh v. State* AIR 1988 HP 13, *Kalawati v. State* AIR 1989 HP 5.

79. Above n. 26.

80. *R. Gandhi v. UoI* AIR 1989 Mad. 205.

A feature of some Supreme Court cases has been the setting out of guidelines, going beyond the circumstances of the case before it. Similarly, in the High Court case of *Elumalai* the petition ostensibly concerned the position of three named prisoners; however, the High Court directed the magistrates to look into the cases of *all* those arrested under certain sections of the Criminal Procedure Code and set out some “propositions” on extensions of remands (a combination of statutory interpretation and common sense).⁸¹ In one or two cases the High Court has persuaded the parties to settle. In *Janki Nathubhai Chhara* the High Court persuaded the state to make funds available to improve drainage. In several cases the litigation seems to have prompted action by the administration — a tactic which Professor Baxi has suggested may be intended to avoid the risk of actually losing on the substantive legal point.⁸² It is noteworthy that despite the refusal of the court to interfere in the case of the Attara Cutcherry, it still houses the Bangalore High Court; this may suggest that even unsuccessful litigation may have political impact.

This is very slim evidence on which to decide how far PIL has become a reality at the High Court level. Informal evidence suggests that substantial numbers of cases may be in the pipeline, at least in some states, and time will tell what part this type of litigation will play in establishing the accountability of the executive, and to whom.

81. Above n. 21 In *Rajesh Khaitan v. State of West Bengal* AIR 1985 Cal. 208, the remedy was a set of suggested “guidelines” for the improvement of the state of the morgue complained of. And see *J. Mohapatra v. State* 1984 4 SCC 103 where the Supreme Court set out guidelines for the selection of books for schools in a case coming from Orissa High Court.

82. Op. cit. at p. 404.

