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I. Introduction

1 It is indeed my privilege to be speaking here today, before such a distinguished audience. I would like to thank the Singapore Academy of Law for giving me this opportunity. Over the last three decades or so, the device of Public Interest Litigation ("PIL") has come to be recognised as a characteristic feature of the higher Judiciary in India. Even though Indian courts cannot take credit for initiating the concept of "public law litigation", they have in due course emerged as the site where this device has been repeatedly used to protect the interests of disadvantaged groups as well as address matters of collective concern. The phrase "public law litigation" was first prominently used by American academic Abram Chayes to describe the practice of lawyers or public spirited individuals who seek to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws and articulate public norms.[1] However, the evolution of PIL in India, or Social Action Litigation – as Prof Upendra Baxi chooses to describe it, has accommodated several other distinctive features.

2 In this session, I will first summarise the core features of the PIL process and demonstrate how it marks a departure from the common-law understanding of the judicial process. After that I will present an overview of the circumstances that led to the introduction of this device which is clearly correlated to the "activist" turn of the higher Judiciary in India. The next component will be devoted to a survey of some prominent decisions given in PIL cases and to conclude I will reflect on some of the strategies adopted to streamline the institution of cases under this category.

3 Beginning with the first few instances in the late-1970s, the category of PIL has come to be associated with its own "people-friendly" procedure. The foremost change came in the form of the dilution of the requirement of "*locus standi*" for initiating proceedings. Since the intent was to ensure redressal to those who were otherwise too poor to move

1 See: Abram Chaves, "The role of the judge in Public Law litigation" (1976) 89 Harvard Law Review 1281.

the courts or were unaware of their legal entitlements, the court allowed actions to be brought on their behalf by social activists and lawyers.[2] In numerous instances, the court took *suo moto* cognisance of matters involving the abuse of prisoners, bonded labourers and inmates of mental institutions, through letters addressed to sitting judges. This practice of initiating proceedings on the basis of letters has now been streamlined and has come to be described as "epistolary jurisdiction".

4 In PIL, the nature of proceedings itself does not exactly fit into the accepted common-law framework of adversarial litigation. The courtroom dynamics are substantially different from ordinary civil or criminal appeals. While an adversarial environment may prevail in cases where actions are brought to highlight administrative apathy or the Government's condonation of abusive practices, in most public interest-related litigation, the judges take on a far more active role in terms of posing questions to the parties as well as exploring solutions. Especially in actions seeking directions for ensuring governmental accountability or environmental protection, the orientation of the proceedings is usually more akin to collective problem-solving rather than an acrimonious contest between the counsels. Since these matters are filed straightaway at the level of the Supreme Court or the High Court, the parties do not have a meaningful opportunity to present evidence on record before the start of the court proceeding. To overcome this problem, our courts have developed the practice of appointing "fact-finding commissions" on a case-by-case basis, which are deputed to inquire into the subject-matter of the case and report back to the court. These commissions usually consist of experts in the concerned fields or practising lawyers. In matters involving complex legal considerations, the courts also seek the services of senior counsel by appointing them as *amicus curiae* on a case-by-case basis.[3]

5 For purposes of constitutional competence, these actions are characterised as those coming under the writ jurisdiction of the Supreme Court of India under Art 32 of our Constitution and the various High Courts, under Art 226. The traditional extent of writ jurisdiction was of course a colonial inheritance from the British-era and the remedies that could be invoked were those of *habeas corpus*, *quo warranto*, *mandamus*, *prohibition* and *certiorari*. However, the Indian courts have pushed the boundaries of constitutional remedies by evolving the concept of a "continuing mandamus" which involves the

2 See Susan D Susman, "Distant voices in the Courts of India: Transformation of standing in Public Interest Litigation" (1994) 13 Wisconsin International Law Journal 57.

3 See Ashok H Desai & S Muralidhar, "Public Interest Litigation: Potential and Problems" in *Supreme but not Infallible* (B N Kirpal *et al* eds) (Oxford University Press, 2000) pp 159–192 at pp 164–167.

passing of regular directions and the monitoring of their implementation by executive agencies. In addition to designing remedies for ensuring that their orders are complied with, the courts have also resorted to private law remedies such as injunctions and "stay" orders in PIL matters. The Supreme Court of India has been able to shape appropriate remedies for a variety of situations on account of the wide discretionary powers for granting constitutional remedies that have been conferred on it as *per* the language of Art 32 of the Constitution. Furthermore, under Art 141 of the Constitution of India, the Supreme Court's rulings are considered to be the "law of the land" and become binding precedents for all courts and tribunals in the country's legal system. Hence, the Supreme Court's decisions in PIL matters have progressively shaped a unique jurisprudence that gives due weightage to the interests of the underprivileged and backward sections in society. A significant consequence of this is that creative remedies designed for particular fact-situations come to be widely reported and are referred to by courts all over the country. In this way, the rulings given in PIL cases create an active judicial dialogue within the whole legal system.

6 The advent of PIL is one of the key components of the approach of "judicial activism" that is attributed to the higher Judiciary in India. The courts' interventions have played a pivotal role in advancing the protection of civil liberties, the rights of workers, gender justice, accountability of public institutions, environmental conservation and the guarantee of socio-economic entitlements such as housing, health and education among others. This has not only strengthened the position of the Judiciary *vis-à-vis* the other wings of Government, but has also raised its prestige among the general populace. However, this activist disposition of the courts also has its critics.

7 The principled criticism against PIL is that it detracts from the constitutional principle of "separation of powers" by allowing the courts to arbitrarily interfere with policy-choices made by the Legislature and pass orders that may be difficult for the executive agencies to implement. In respect of practical considerations, the criticism revolves around the behaviour of litigants as well as judges. From time to time, it has been urged that the dilution of the requirement of "*locus standi*" has opened up the floodgates for frivolous cases that either involve the litigants' private interests or are vehicles for gaining publicity rather than seeking justice for disadvantaged groups.[4] It is argued that in light of the increasing case-load before the appellate judges, the PIL cases impose an additional "gate-keeping" role and impede efficiency. From the standpoint of the judges, it is reasoned that quite often there are no

4 See: T R Andhyarujina, *Judicial Activism and Constitutional Democracy in India* (Bombay: N M Tripathi, 1992).

checks against decisions or orders that amount to "judicial overreach" or "judicial populism".

8 While all of these criticisms have been offered by acclaimed scholars, senior practitioners and sitting judges as well, there is a much more compelling case in defence of the use of PIL. I would like to take this opportunity to present that defence. The main rationale for "judicial activism" in India lies in the highly unequal social profile of our population, where judges must take proactive steps to protect the interests of those who do not have a voice in the political system and do not have the means or information to move the courts. This places the Indian courts in a very different social role as compared to several developed nations where directions given by "unelected judges" are often viewed as unjustified restraints on the will of the majority. It is precisely this countermajoritarian function that needs to be robustly discharged by an independent and responsible Judiciary. At this point, I would like to recall an observation made in the matter of *Bihar Legal Support Society v Chief Justice of India*:[5]

> The majority of the people of our country are subjected to this denial of 'access to justice' and overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings … The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.

II. The "activist" turn of the Indian judiciary

9 Our judicial system is a very visible part of the inheritance from the British Raj. We continue to rely on a sizeable body of statutory law and precedents from the colonial period, with the exception of what is repugnant to our constitutional provisions. However, the framers of our Constitution incorporated influences from several countries and adopted the idea of "judicial review" as opposed to the British notion of "Parliamentary sovereignty".[6] In India, the criteria for the courts to review governmental action is threefold – the fundamental rights

5 AIR 1987 SC 38 at 39, para 2.

6 There is an express provision for "judicial review" in Art 13 of the Constitution of India. Article 13(1) says that "all laws that were in force in the territory of India immediately before the adoption of the Constitution, in so far as they are inconsistent with the provisions containing the fundamental rights, shall, to the extent of such inconsistency, be void". Article 13(2) further says that "the states shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void".

enshrined in Pt III of the Constitution, the reasonableness of administrative actions and the demarcation of legislative competence between the Union and the States.

10 However, the scope of this power of "judicial review" was keenly contested throughout the 1950s and 1960s, primarily over the question of the "right to property". During that phase, Governments at both the Union level and most States enacted legislation providing for land acquisition in order to advance the policy of agrarian land reforms. However, many of the large landowners who were required to give up their holdings challenged these laws before the courts on grounds such as inadequate compensation, among others. While the Nehru-led Government passed several constitutional amendments with the objective of immunising these land-reform measures against "judicial review", the courts frequently ruled in favour of the property-owners. By the late 1960s, this tussle between the courts and the Congress Party controlled Parliament turned into one between the idea of "judicial review" on one hand and unqualified "parliamentary sovereignty" on the other hand.[7] The Supreme Court itself was called upon to rule on the scope of Parliament's power to amend the Constitution, and it evolved the "Basic Structure" doctrine in the much-cited decision in *Keshavananda Bharati v State of Kerala*.[8] By a narrow majority of seven to six, it was ruled that Parliament's power of amendment was not absolute and it could not amend the "Basic Structure" of the Constitution, which in the opinion of the judges consisted of elements such as democracy, rule of law, secularism, separation of powers and judicial review.[9] The said decision did not curry favour with the Indira Gandhi-led government of the day and three of the judges who ruled for the majority were superseded in the matter of appointment to the position of Chief Justice of India in 1973. Nevertheless, the decision had given a clear signal in defence of judicial independence.

11 Around the same time, there was an increasing realisation on the part of the sitting judges in the Supreme Court that the Judiciary was commonly perceived as an elitist body which would dispense justice only to those who could afford it. Its pro-landowner decisions had also been portrayed as an impediment to the land reform programme by the incumbent executive agencies. Recognising the need to engage with the egalitarian constitutional philosophy, some judges took the lead in raising concerns about improving access to justice for the

7 For a brief commentary on the evolution of the doctrine of "judicial review" in India, see S P Sathe, "Judicial Activism: The Indian experience" (2001) 6 Washington University Journal of Law and Policy 29.

8 (1973) 4 SCC 225.

9 See, generally, Raju Ramachandran, "The Supreme Court and the Basic Structure Doctrine" in *Supreme but not Infallible* (B N Kirpal *et al* eds) (Oxford University Press, 2000) at pp 107–133.

underprivileged. In a report on legal aid published in 1971, Justice P N Bhagwati observed:[10]

> Even while retaining the adversary system, some changes may be effected whereby the judge is given a greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in administration of justice.

12 The Committee on Judicare, consisting of Justice V R Krishna Iyer and Justice Bhagwati, referred to Social Action Litigation as a supplemental tool to grassroots legal services programmes, in their report published in 1977. Soon after, these two judges took the lead in promoting the same by taking *suo moto* cognisance of matters on the basis of letters addressed to them. However, before describing the use of PIL in some significant instances, it is important to understand the other limb of the Indian Judiciary's "activist" turn – *ie*, a change in the understanding of constitutional rights.

13 The most representative right that can be examined to illustrate this change is Art 21 of the Constitution of India. Article 21 reads as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." The understanding of Art 21 in the early years of the Supreme Court was that "personal liberty" could be curtailed as long as there was a legal prescription for the same. In *AK Gopalan*'s case,[11] the Supreme Court had ruled that preventive detention by the State was permissible as long as it was provided for under a governmental measure (*eg*, legislation or an ordinance) and the court could not inquire into the fairness of such a measure. It was held that the words "procedure established by law" were different from the substantive "due process" guarantee provided under the 14th amendment of the US Constitution. The framers of the Indian Constitution had consciously chosen the expression "procedure established by law" which requires a much lower threshold for placing restraints on individual liberty. Noted scholar Granville Austin has speculated that this pro-government orientation may have been prompted by the widespread communal violence that had taken place around the time of partition. Furthermore, it is a well-known fact that Shri B N Rau, one of the principal draftsmen of our constitutional text, had been advised about the complications of incorporating a

10 Cited from: Ashok Desai & S Muralidhar, "Public Interest Litigation: Potential and Problems" in *Supreme but not infallible* (B N Kirpal *et al* eds) (Oxford University Press, 2000) pp 159–192 at p 161.

11 *AK Gopalan v State of Madras* AIR 1950 SC 27.

substantive "due process" clause, by none other than Justice Felix Frankfurter.[12]

14 This position prevailed for several years until it was changed in *Maneka Gandhi*'s case.[13] In that case, it was held that restraints on "personal liberty" protected under Art 21 should also be tested against the guarantees of non-arbitrariness, reasonableness and fairness that were implicit in the language of Arts 14, 19 and 21 of the Indian Constitution. Article 14 mandates the guarantee of "equal protection before the law", while Art 19 enumerates the basic freedoms available to citizens, such as free speech, peaceful assembly, association, movement and pursuit of livelihood. The court developed a theory of "inter-relationship of rights" to hold that governmental action which curtailed either of these rights should meet the designated threshold for restraints on all of them. In this manner, the courts incorporated the guarantee of "substantive due process" into the language of Art 21. Many commentators have opined that this change in the interpretation of Art 21 was prompted by the experience of the "internal emergency" imposed between June 1975 and March 1977 – a period that was marked by the use of arbitrary and unjust detention laws against the political opposition as well as thousands of ordinary citizens.

15 The decision in *Maneka Gandhi*'s case proved to be a precursor to a series of decisions, wherein the conceptions of "life" and "personal liberty" came to be interpreted liberally. Primarily through the vehicle of PIL, the Supreme Court has continued to expand the ambit of Art 21 which now includes some guarantees for socio-economic entitlements which had not been expressly enumerated as part of the fundamental rights in the Constitution. In the words of Justice Bhagwati:[14]

> … We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms …

16 Moreover, through innovative changes to the process for instituting proceedings, ascertaining facts and granting discretionary remedies, the Indian courts have stepped beyond their traditional domain to render justice to women, children, bonded labourers and other oppressed sections of society. Notably, the Supreme Court has

12 See T R Andhyarujina, "The Evolution of Due Process of Law by the Supreme Court" in *Supreme but not infallible* (B N Kirpal *et al* eds) (Oxford University Press, 2000) at pp 193–213.

13 *Maneka Gandhi v Union of India* AIR 1978 SC 597.

14 Observations in *Francis Coralie Mullin v Union Territory of Delhi* AIR 1981 SC 746 at 753, para 7; (1981) 1 SCC 608.

affirmed that both the fundamental rights enumerated in Pt III of the Constitution and the directive principles enumerated in Pt IV, must be interpreted harmoniously. It was observed in the *Kesavananda Bharati* decision,[15] that the directive principles and the fundamental rights supplement each other and aim at the same goal of bringing about a social revolution and the establishment of a welfare State. Furthermore, in *Unni Krishnan, JP v State of Andhra Pradesh*,[16] Justice Jeevan Reddy had declared:

> … the provisions of Parts III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV.

17 This approach of harmonising the fundamental rights and directive principles has been successful to a considerable extent. For example, the Supreme Court has pointed to the objectives of socio-economic entitlements in order to interpret the right to "life and personal liberty". For instance, in *Olga Tellis v Bombay Municipal Corp*,[17] a journalist had filed a petition on behalf of hundreds of pavement-dwellers who were being displaced due to construction activity by the respondent corporation. The court recognised the "right to livelihood and housing" of the pavement-dwellers as an extension of the protection of life and personal liberty, and issued an injunction to halt their eviction. Similarly, in *Parmanand Katara v Union of India*, the court articulated a "right to health" when it ruled that no medical authority could refuse to provide immediate medical attention in emergency cases.[18] In numerous instances where the court's intervention has been sought in environment-related matters, it has also referred to a "right to a clean environment" emanating from Art 21. The courts have also pointed to directive principles in interpreting the constitutional prohibitions against forced labour and child labour.

III. Milestones of PIL in India

18 One of the earliest cases of PIL was that reported as *Hussainara Khatoon (I) v State of Bihar*.[19] This case was concerned with a series of articles published in a prominent newspaper – the *Indian Express* which

15 (1973) 4 SCC 225.

16 AIR 1993 SC 2178 at 2230, para 141; (1993) 1 SCC 645; See "Chapter 5: Restructuring the Courts: Public Interest Litigation in the Indian Courts" in Sandra Fredman, *Human rights transformed – positive rights and positive duties* (Oxford University Press, 2008) at pp 124–149.

17 AIR 1985 SC 180.

18 AIR 1989 SC 2039.

19 (1980) 1 SCC 81; See Upendra Baxi, "The Supreme Court under trial: Undertrials and the Supreme Court" (1980) Supreme Court Cases (Journal section) at p 35.

exposed the plight of undertrial prisoners in the State of Bihar. A writ petition was filed by an advocate drawing the court's attention to the deplorable plight of these prisoners. Many of them had been in jail for longer periods than the maximum permissible sentences for the offences they had been charged with. The Supreme Court accepted the *locus standi* of the advocate to maintain the writ petition. Thereafter, a series of cases followed in which the court gave directions through which the "right to speedy trial" was deemed to be an integral and an essential part of the protection of life and personal liberty.

19 Soon thereafter, two noted professors of law filed writ petitions in the Supreme Court highlighting various abuses of the law, which, they asserted, were a violation of Art 21 of the Constitution.[20] These included inhuman conditions prevailing in protective homes, long pendency of trials in court, trafficking of women, importation of children for homosexual purposes, and the non-payment of wages to bonded labourers, among others. The Supreme Court accepted their *locus standi* to represent the suffering masses, and passed guidelines and orders that greatly ameliorated the conditions of these people.

20 In another matter, a journalist, Ms Sheela Barse,[21] took up the plight of women prisoners who were confined in the police jails in the city of Bombay. She asserted that they were victims of custodial violence. The court took cognisance of the matter and directions were issued to the Director of College of Social Work, Bombay. He was ordered to visit the Bombay Central Jail and conduct interviews of various women prisoners in order to ascertain whether they had been subjected to torture or ill-treatment. He was asked to submit a report to the court in this regard. Based on his findings, the court issued directions such as the detention of female prisoners only in designated female lock-ups guarded by female constables and that accused females could be interrogated only in the presence of a female police official.

21 PIL acquired a new dimension – namely that of "epistolary jurisdiction" with the decision in the case of *Sunil Batra (II) v Delhi Administration*.[22] It was initiated by a letter that was written by a prisoner lodged in jail to a judge of the Supreme Court. The prisoner complained of a brutal assault committed by a head warder on another prisoner. The court treated that letter as a writ petition, and, while issuing various directions, opined that:

> [T]echnicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found.

20 *Upendra Baxi (Dr) v State of UP* (1983) 2 SCC 308.
21 *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96.
22 (1980) 3 SCC 488 at para 50, *per* Krishna Iyer J.

22 In *Municipal Council, Ratlam v Vardhichand*,[23] the court recognised the *locus standi* of a group of citizens who sought directions against the local Municipal Council for removal of open drains that caused stench as well as diseases. The court, recognising the right of the group of citizens, asserted that if the:

> … centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of *locus standi* to the community orientation of public interest litigation, [the court must consider the issues as there is need to focus on the ordinary men].

23 In *Parmanand Katara v Union of India*,[24] the Supreme Court accepted an application by an advocate that highlighted a news item titled "Law Helps the Injured to Die" published in a national daily, *The Hindustan Times*. The petitioner brought to light the difficulties faced by persons injured in road and other accidents in availing urgent and life-saving medical treatment, since many hospitals and doctors refused to treat them unless certain procedural formalities were completed in these medico-legal cases. The Supreme Court directed medical establishments to provide instant medical aid to such injured people, notwithstanding the formalities to be followed under the procedural criminal law.

24 In many other instances, the Supreme Court has risen to the changing needs of society and taken proactive steps to address these needs. It was, therefore, the extensive liberalisation of the rule of *locus standi* which gave birth to a flexible PIL system. A powerful thrust to PIL was given by a seven-judge bench in the case of *SP Gupta v Union of India*.[25] The judgment recognised the *locus standi* of bar associations to file writs by way of PIL. In this particular case, it was accepted that they had a legitimate interest in questioning the Executive's policy of arbitrarily transferring High Court judges, which threatened the independence of the Judiciary. Explaining the liberalisation of the concept of *locus standi*, the court opined:

> It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him.

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23 AIR 1980 SC 1622 at 1623, para 1; (1980) 4 SCC 162.

24 (1989) 4 SCC 286.

25 (1981) Supp SCC 87 at para 17, *per* P N Bhagwati J.

25 The unique model of PIL that has evolved in India not only looks at issues like consumer protection, gender justice, prevention of environmental pollution and ecological destruction, it is also directed towards finding social and political space for the disadvantaged and other vulnerable groups in society. The courts have given decisions in cases pertaining to different kinds of entitlements and protections such as the availability of food, access to clean air, safe working conditions, political representation, affirmative action, anti-discrimination measures and the regulation of prison conditions, among others. For instance, in *People's Union for Democratic Rights v Union of India*,[26] a petition was brought against governmental agencies which questioned the employment of underage labourers and the payment of wages below the prescribed statutory minimum wage-levels to those involved in the construction of facilities for the then upcoming Asian Games in New Delhi. The court took serious exception to these practices and ruled that they violated constitutional guarantees. The employment of children in construction-related jobs clearly fell foul of the constitutional prohibition on child labour and the non-payment of minimum wages was equated with the extraction of forced labour. Similarly, in *Bandhua Mukti Morcha v Union of India*,[27] the Supreme Court's attention was drawn to the widespread incidence of the age-old practice of bonded labour which persists despite the constitutional prohibition. Among other interventions, one can refer to the *Shriram Food & Fertilizer* case[28] where the court issued directions to employers to check the production of hazardous chemicals and gases that endangered the life and health of workmen. It is also through the vehicle of PIL, that the Indian courts have come to adopt the strategy of awarding monetary compensation for constitutional wrongs such as unlawful detention, custodial torture and extra-judicial killings by state agencies.[29]

26 In the realm of environmental protection, many of the leading decisions have been given in actions brought by renowned environmentalist M C Mehta. He has been a tireless campaigner in this area and his petitions have resulted in orders placing strict liability for the leak of Oleum gas from a factory in New Delhi,[30] directions to check

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26 AIR 1982 SC 1473.

27 (1984) 3 SCC 161.

28 (1986) 2 SCC 176.

29 See observations justifying the payment of compensation for human rights violations by state agencies in the following decisions: *Bhim Singh v State of Jammu and Kashmir* (1985) 4 SCC 677; *Nilabati Behera v State of Orissa* (1993) 2 SCC 746; *DK Basu v Union of India* (1997) 1 SCC 416. Also see Lutz Oette, "India's International obligations towards victims of human rights violations: Implementation in domestic law and practice" in *Human rights, Justice and Constitutional empowerment* (C Raj Kumar & K Chockalingam eds) (Oxford University Press, 2007) at pp 462–485.

30 *MC Mehta v Union of India* (1987) 1 SCC 395.

pollution in and around the Ganges river,[31] the relocation of hazardous industries from the municipal limits of Delhi,[32] directions to state agencies to check pollution in the vicinity of the Taj Mahal[33] and several afforestation measures. A prominent decision was made in a petition that raised the problem of extensive vehicular air pollution in Delhi. The court was faced with considerable statistical evidence of increasing levels of hazardous emissions on account of the use of diesel as a fuel by commercial vehicles. The Supreme Court decided to make a decisive intervention in this matter and ordered government-run buses to shift to the use of Compressed Natural Gas ("CNG"), an environment-friendly fuel.[34] This was followed some time later by another order that required privately-run "autorickshaws" (three-wheeler vehicles which meet local transportation needs) to shift to the use of CNG. At the time, this decision was criticised as an unwarranted intrusion into the functions of the pollution control authorities, but it has now come to be widely acknowledged that it is only because of this judicial intervention that air pollution in Delhi has been checked to a substantial extent. Another crucial intervention was made in *Council for Environment Legal Action v Union of India*,[35] wherein a registered non-governmental organisation ("NGO") had sought directions from the Supreme Court in order to tackle ecological degradation in coastal areas. In recent years, the Supreme Court has taken on the mantle of monitoring forest conservation measures all over India, and a special "Green bench" has been constituted to give directions to the concerned governmental agencies. At present, I am part of this Green bench and can vouch for the need to maintain judicial supervision in order to protect our forests against rampant encroachments and administrative apathy.

27 An important step in the area of gender justice was the decision in *Vishaka v State of Rajasthan*.[36] The petition in that case originated from the gang-rape of a grassroots social worker. In that opinion, the court invoked the text of the Convention for the Elimination of all forms of Discrimination Against Women ("CEDAW") and framed guidelines for establishing redressal mechanisms to tackle sexual

31 *MC Mehta v Union of India* (1988) 1 SCC 471.

32 *MC Mehta v Union of India* (1996) 4 SCC 750.

33 *MC Mehta v Union of India* (1996) 4 SCC 351. Also see Emily R Atwood, "Preserving the Taj Mahal: India's struggle to salvage cultural icons in the wake of industrialisation" (2002) 11 *Penn State Environmental Law Review* 101.

34 See decision in *MC Mehta v Union of India* (1998) 8 SCC 648; Also see Armin Rosencranz & Michael Jackson, "The Delhi Pollution case: The Supreme Court of India and the limits of judicial power" (2003) 28 Columbia Journal of Environmental Law 223.

35 (1996) 5 SCC 281.

36 (1997) 6 SCC 241; See D K Srivastava, "Sexual harassment and violence against women in India: Constitutional and legal perspectives" in *Human rights, Justice and Constitutional empowerment* (C Raj Kumar & K Chockalingam eds) (Oxford University Press, 2007) at pp 486–512.

harassment of women at workplaces. Though the decision has come under considerable criticism for encroaching into the domain of the Legislature, the fact remains that till date the Legislature has not enacted any law on the point. It must be remembered that meaningful social change, like any sustained transformation, demands a long-term engagement. Even though a particular petition may fail to secure relief in a wholesome manner or be slow in its implementation, litigation is nevertheless an important step towards systemic reforms. A recent example of this approach was the decision in *People's Union for Civil Liberties v Union of India*,[37] where the court sought to ensure compliance with the policy of supplying mid-day meals in government-run primary schools. The mid-day meal scheme had been launched with much fanfare a few years ago with the multiple objectives of encouraging the enrolment of children from low-income backgrounds in schools and also ensuring that they received adequate nutrition. However, there had been widespread reports of problems in the implementation of this scheme such as the pilferage of food-grains. As a response to the same, the Supreme Court issued orders to the concerned governmental authorities in all States and Union Territories, while giving elaborate directions about the proper publicity and implementation of the said scheme.

IV. Concluding remarks: balancing a double-edged sword

28 The power of the court to entertain any circumstance that may hinder societal growth, or may cause hardship to a class of individuals, is not uninhibited. It is carefully regulated with tight reins, and cases of public interest are taken up only after rigorous scrutiny. For instance, in a case wherein a challenge was made to the Government of India's telecommunication policy, the Supreme Court refused to entertain the matter on the ground that it purely concerned a question of policy. Similarly, PIL that has sought to prohibit the sale of liquor or the recognition of a particular language as a national language, or the introduction of a uniform civil code, have been rejected on the ground that these were matters of policy and were beyond the ambit of judicial scrutiny. The need for deference to the other wings of Government in respect of questions of policy was clearly expressed by Justice R S Pathak in the following words:[38]

> Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility in public interest litigation, of succumbing to the temptation of crossing into

37 (2007) 1 SCC 728.

38 Cited from (1984) 3 SCC 161 at 232.

> territory which properly pertains to the legislature or to the executive government … In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one.

29 The court has refused to entertain cases that are "private interest" litigations disguised as "public interest" litigations. It has also refused to interfere with convictions in criminal cases. In a case where directions were sought from the Supreme Court to the Central Government to preserve and protect certain temples, the said request was rejected. The court stated: "The matter is eminently one for appropriate evaluation and action by the executive, and may not have an adjudicative disposition or judicially manageable standards as the pleadings now stand."

30 At the time of admitting matters in the form of PIL, the courts have to carefully consider whether or not they are overstepping their domain. Upon considering the issues at hand, they must then consider whether the orders they intend to pass can be realistically implemented. Judges must also be attuned to the fact that inconsistencies in the observations made by different courts with respect to the same set of issues, can add to administrative difficulties. There is also a need to keep a watch on the abuse of process by litigants so as to avoid a situation where such cases occupy a disproportionate extent of the courts' working time. Justice S P Barucha has expressed the need for caution in the following words:[39]

> This court must refrain from passing orders that cannot be enforced, whatever the fundamental right may be and however good the cause. It serves no purpose to issue some high profile mandamus or declaration that can remain only on paper. It is counter productive to have people say 'The Supreme Court has not been able to do anything' or worse. It is of cardinal importance to the confidence that people have in the Court that its orders are implicitly and promptly obeyed and is, therefore, of cardinal importance that orders that are incapable of obedience and enforcement are not made.

31 In *Raunaq International Ltd v IVR Construction Ltd*,[40] the following observations were made with the objective of streamlining the institution of PIL:

> When a petition is filed as a public interest litigation … the Court must satisfy itself that the party which has brought the litigation is

39 Cited from Ashok Desai & S Muralidhar, "Public Interest Litigation: Potential and Problems" in *Supreme but not infallible* (B N Kirpal *et al* eds) (Oxford University Press, 2000) pp 159–192 at p 182.

40 AIR 1999 SC 393 at 397, para 12; (1999) 1 SCC 492.

> litigating *bona fide* for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition … Even when a public interest litigation is entertained, the Court must be careful to weigh conflicting public interests before intervening.

32 It is evident that some instances require courts to draw a balance between the competing interests of different sections, each of whom may articulate their claims as those grounded in public interest. It is in this regard that the courts engage in a process that seeks to build a consensus among these sections. The device of PIL may have its detractors, but it has played an invaluable role in advancing our constitutional philosophy of social transformation and improving access to justice. It is my sincere hope that this session has rekindled your interest in this continuing socio-legal experiment.