

PUBLIC INTEREST LITIGATION

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I INTRODUCTION

PUBLIC INTEREST Litigation (PIL) constitutes today a significant segment of the expanding horizon of judicial power and has acquired legitimacy. Through the new jurisdiction the Indian judges have undertaken expanded responsibilities as critics and monitors of the government and its agencies. At the same time the notion that courts are the only suitable forums for vindication of public interest makes the courts overloaded with commitments with less capacity to carry them out. For the last four years PIL activism has remained a focus for admiration in the mainstream of Indian legal scholarship and judicial law-making for providing symbols for rallying the disadvantaged groups before the courts rather than to adopt other political means.

The opinions on PIL during the year 1985 would reveal that the unprecedented demands and pressures of the newly emerging public advocacy groups is now overwhelming the judges over swollen PIL case-loads seeking judicial intervention in almost any public matter. This survey should, therefore, be read as a critique of PIL activism. For the sake of convenience and grasp the discussion is arranged on the basis of the social issues encountered in PIL cases during 1985.

II PROTECTING RIGHT TO LIVELIHOOD : PAVEMENT AND SLUM DWELLERS

The opinion contributed by a five-judge-Bench of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*¹ constitutes the best example of symbolic activism. *Olga Tellis* arose out of a series of PIL petitions filed by pavement dwellers of Bombay facing the threat of forcible eviction and demolition of their dwellings by the Bombay Municipal Corporation.

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¹ (1985) 3 SCC 545 (Chandrachud CJ, Fazal Ali, Tulzapurkar, Chinnappa Reddy and Varadarajan JJ). The citation given here is of Supreme Court cases because the case though, decided on July 10, 1985, was published in *All India Reporter* in 1986. The departure from uniform citation is exceptional mainly to prevent the omission of surveying a major 1985 decision on PIL.

The PIL petitioners included journalists and social action groups seeking judicial response on behalf of these victimized groups. Forcible eviction and demolition of pavement and slum dwellings was ordered in 1981 following an announcement of the then Chief Minister, A.R. Antulay that all the pavement dwellers in the city of Bombay should be evicted forcibly and deported to their respective places. The justification given by Antulay was, "It is a very inhuman existence. These structures are flimsy and open to elements."² The municipal commissioners assisted by commissioner of police, was directed by the government to cause the removal of encroachments under sections 312 to 314 of the Bombay Municipal Corporation Act, 1888. The slum and pavement dwellers were not given any notice of eviction as section 314 empowered the commissioner to cause removal of encroachments on footpaths, pavements, *etc.* even "without notice."

Olga Tellis portrays the plight of nearly half of the population of Bombay living in the midst of filth and squalor. In the words of Chandrachud CJ:

Rabid dogs in search of stinking meat and cats in search of hungry rats keep them company. They cook and sleep where they ease, for no conveniences are available to them. Their daughters, come of age, bathe under the nosy gaze of passers-by, unmindful of the feminine sense of bashfulness.... The boys beg.³

The petitioner's simple assertion was that their eviction from their dwellings would mean the deprivation of their means of livelihood as hawkers, casual labourers, domestic servants, construction workers and luggage carriers. They never claimed that they had any fundamental right to live in slums or on pavements. Their only contention was that they had a fundamental right to live, a right which could not be exercised without the means of livelihood. The right to life guaranteed by article 21 was illusory without a right to the protection of the means by which alone life could be lived. So the only relief claimed by them through PIL was that the government be prevented from forcibly evicting or demolishing their dwellings until they were provided with alternative house sites as close as possible to their place of work. If there was an obligation upon the state under articles 39 (a) and 41 to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry if the courts could not play an affirmative role in securing to these slum and pavement dwellers their fundamental right to exist.

For the Bombay Municipal Corporation and the political executive, these slum and pavement dwellers were present as trespassers, chain-snatchers, prostitutes and anti-social elements.⁴ They were present as violators

² *Id.* at 557.

³ *Id.* at 555.

⁴ *Id.* at 558.

of the rights of the pedestrians to pass and repass. Section 314 obligated the corporation to cause removal of such encroachments even without notice. To the government, giving of notice would have been futile because the only answer a pavement or slum dweller could make to such a notice would have been that he was compelled to live on pavements or in slums as he had no other place to go.

To the petitioners, the procedure laid down by the Act for removal of encroachments was arbitrary, unfair and unreasonable. They urged the Supreme Court to decide the content of the right to life, the function of property in a welfare state, the dimension and true meaning of the constitutional commitment that the public property must subserve the common good and above all the role of the courts in reducing social inequalities and social imbalances.

The Supreme Court was thus, called upon to decide the following issues:

(a) Whether the right to life in article 21 included the right to livelihood? If the answer was in the affirmative, then, could the state be allowed to deprive the slum and pavement dwellers of their right to livelihood by evicting them forcibly?

(b) Whether the procedure laid down in section 314 was fair, just and reasonable? Whether the law authorising the deprivation of the right to livelihood was reasonable?

(c) Should the court force the government to provide alternative house sites to these slum and pavement dwellers in order to secure to them a meaningful right to livelihood in a welfare state?

As to (a) the court agreed, for the first time,⁵ that the right to life in article 21 includes the right to livelihood because no man can live without the means of living:

If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.... Deprive a person of his right to livelihood and you shall have deprived him of his life.⁶

The court approved the view taken by Douglas J in *Balsey v. Board of Regents*⁷ that the right to work is the most precious liberty because it

⁵ *In re Sant Ram*, A.I.R. 1960 S.C. 932, a five-judge Bench of the Supreme Court had categorically denied that the right to livelihood was included in the right to life under article 21. *In re Sant Ram* has been followed in subsequent cases.

⁶ *Supra* note 2 at 572.

⁷ 347 MD 442 (1954) cited at 565, 572.

“sustains and enables a man to live.”⁸ Since the right to live and right to work are integrated and interdependent, the slum and pavement dwellers will be deprived of their right to livelihood on eviction.

The beauty of *Olga Tellis* ends here. After having read right to livelihood as a part of article 21, the court quickly says that such a right could be taken away by a just, fair and reasonable procedure. Even if it was established that if the petitioners were evicted from their dwellings, they will be deprived of their livelihood, the “Constitution does not put an absolute embargo on the deprivation of life or personal liberty.”⁹

As to (b) the court held that section 314 laid down a fair, just and reasonable procedure enabling the municipal commissioner to cause removal of encroachments without notice. The commissioner had discretion to cause an encroachment to be removed with or without notice and it should be presumed that the commissioner would exercise his discretion in a reasonable manner. The court preferred to lean in favour of this interpretation because it helped to sustain the validity of the law. The only flaw in the commissioner’s action was that he had not exercised his discretion in a reasonable manner as he had not given notice to the slum and pavement dwellers.

The court never discussed the crucial question whether a century-old antiquated piece of legislation passed in the colonial era when neither the pavement dwellers existed nor was there any social commitment on the part of the rulers to remove social imbalances, was reasonable in the contemporary India.

As to (c) the court was very unkind to the slum and pavement dwellers. The profound socialistic rhetoric of the court that “the eviction of the pavement or slum dweller not only means his removal from his house but the destruction of his house itself”¹⁰ proved merely symbolic for the uprooted dwellers when it ordered: “*The offer of alternative pitches to such pavement dwellers should be made good in the spirit in which it was made, though we do not propose to make it a condition precedent to the removal of the encroachments committed by them.*”¹¹

The only flaw was that these persons were not given notice by the commissioner. So the court supplied this lack by giving them one month’s notice and ordered that they could not be evicted from their dwellings until October 31, 1985.¹²

Olga Tellis indicates that in PIL the judges are able to enlarge the constitutional entitlement of right to life as including right to livelihood without carrying any burden of securing this right to the poor citizens.

⁸ *Id.* at 572.

⁹ *Id.* at 575.

¹⁰ *Id.* at 582.

¹¹ *Id.* at 586.

¹² *Id.* at 589.

III LIBERATING BONDED LABOURERS

In *Mukesh Advani v. State of Madhya Pradesh*,¹³ a social activist invoked the "epistolary jurisdiction"¹⁴ of the Supreme Court under article 32 by annexing a cutting from a newspaper and brought to the notice of the court, the sordid state of bonded labourers working in stone quarries at Raisen in Madhya Pradesh. In a blood curdling report it was revealed that these labourers were brought from Tamil Nadu and once brought to the mines by the contractors, they were subjected to permanent bondage with no housing, no medicare, no leisure and meagre wages just to survive in unhealthy conditions of the eighteenth century vintage.

The court appointed the district judge, Bhopal to investigate and report. The judge reported total absence of the implementation of labour laws to the workers in the stone quarries. The report revealed that sheer inaction of the government only encouraged the harassment and exploitation of the labourers by their masters.

As the report of the district judge showed that at the time of investigations all bonded labourers stood liberated, the Supreme Court simply concentrated on giving directions to the central and state governments to prevent recurrence of bonded labour system in the State of Madhya Pradesh and to take suitable steps for implementation of labour laws especially the statutory prescription of minimum wages to be paid to the workmen so as to provide a shield against unauthorized deductions or exploitation by paying less than the minimum.

This is all that a court can do in a PIL petition. Bonded labourers are liberated from bondage by a court order but what a court can do if effective implementation machinery is overawed by wealthy and unscrupulous contractors who are able to spread their tentacles over officials? What can the court do if its directions are not obeyed? PIL surely removes constraints on human freedom but it is unable to secure to the freed bonded labourers the existential conditions so that they do not relapse into bondage once again.

IV CURBING EVIL OF RAGGING J

Can the PIL activism compel the government to initiate legislation to curb inhuman practices like ragging of freshers in medical colleges? The answer has been given in the negative by the Supreme Court in *State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla*.¹⁵ A guardian of a student of Medical College, Simla, addressed a letter to the

¹³ AIR 1985 SC 1368 (D.A. Desai, A. Varadarajan JJ).

¹⁴ To borrow Professor Upendra Baxi's favourite phrase.

¹⁵ AIR 1985 SC 910.

Chief Justice of Himachal Pradesh High Court complaining of ragging of freshers by senior students and annexed a letter received from his son. A Division Bench treating the letter as a writ petition, accepted the request of the guardian not to disclose his identity in the proceedings. The High Court directed the state government to constitute an anti-ragging committee and called for its report within six months. The committee, *inter alia*, recommended that the government should initiate a legislation in regard to ragging as early as possible.

Thereupon, the High Court issued directions to the government for the implementation of the various recommendations of the committee and asked the chief secretary to the government to file an affidavit within three months setting out the action proposed to be taken in the matter of anti-ragging legislation.

The affirmative role played by the High Court through PIL was set at naught by the Supreme Court. Bhagwati J (as he then was) speaking for the court held that the directions given by the High Court were nothing but an attempt to force the state to initiate legislation to curb the evil of ragging which it was not entitled to do.

The judge laid down the following constraints in the judicial handling of PIL cases :

(a) The underlying purpose of PIL is not to mock at the legislature or the executive. In PIL the courts should never try to usurp the function assigned to the executive or the legislature. They cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it. Nor should they assume to themselves a supervisory role over the law-making activities of the executive or the legislature.¹⁶

(b) A letter written by an aggrieved person or by a public spirited citizen or a social action group can surely be treated as a writ petition but the identity of the person writing such a letter cannot be concealed. Non-disclosure of the identity of the petitioner would render it difficult for the state or its agents against whom the relief is sought, to verify the authenticity of the petitioner and the credibility of the case brought by him.¹⁷

(c) In PIL the court can intervene only when the executive is remiss in discharging its obligations under the Constitution or the law but it cannot compel the government to introduce an ameliorative legislation.

The Supreme Court, therefore, reversed the decision of the High Court in directing (a) that the letters should not be placed on record and (b) that the government should initiate anti-ragging legislation. This case confirms the deep concern expressed by Bhagwati J to ascertain the veracity of the PIL petitioner and prevent the abuse of court process.

¹⁶ *Id.* at 914.

¹⁷ *Id.* at 915.

V JUDICIAL INTERVENTION IN CRIME DETECTION AND PUNISHMENT

State of West Bengal v. Sampat Lal,¹⁸ arose out of two letters written by two public spirited citizens to the Chief Justice of Calcutta High Court alleging that the police investigation in connection with the unnatural death of two teenaged boys was not proper. The petitioners urged the court to intervene and order investigation to be conducted by an independent machinery such as Central Bureau of Investigation (CBI).

Acting on the letters and newspaper reports, the High Court quickly directed the government to appoint a special officer to inquire into the mysterious death of two young boys.

The Supreme Court disagreed with Calcutta High Court's initiative. A three-judge Bench comprising P.N. Bhagwati, A.N. Sen and Ranganath Mishra JJ held that the appointment of the special officer with a direction to inquire into the commission of an offence could only be on the basis that there had not been a proper investigation. It was held that the scheme of the law was that the investigation had been entrusted to the police and it was ordinarily not subject to the normal supervisory power of the court. There was, however, a residuary jurisdiction left in the court to give directions to the investigating agency when it was satisfied that the requirement of the law was not complied with and investigation was not being conducted properly or with due haste and promptitude.

The High Court was, therefore, wrong in appointing a special officer without giving an opportunity to the government of being heard and without being satisfied that the investigation by the police was not proper.

In *Sampat Lal* too the Supreme Court tried to supply guidelines to the High Court in entertaining PIL petitions, especially when its epistolary jurisdiction is invoked. Slowly and slowly and case by case the court is attempting to place PIL to adequate judicial control to prevent the new strategy being used as a tool of blackmail or political game. In *Sampat Lal*, court was reluctant in intervening with the police investigation only on the basis of letters or newspaper reports. It was observed that if the police investigation into the commission of an offence was in process, creating a new channel of inquiry or investigation was likely to create an impression that everything was not well with the statutory agency and it was likely to cast a permanent stigma on the regular police hierarchy.¹⁹

The court agreed that under article 226 a High Court could very well entertain grievances received through postal communication and register the same as writ petition but when "such information is laid before the court, care and caution should be adopted to ensure that the process of

¹⁸ AIR 1985 SC 195.

¹⁹ *Id.* at 201.

the court is not abused or misused.”²⁰ The court should be *prima facie* satisfied that the information laid before it is of such a nature that it calls for examination and this *prima facie* satisfaction may be derived from the credentials of the informant, such as the character or standing of the informant or the nature of the information given by him, namely whether it is vague and indefinite or contains specific allegations as a result of survey or investigation or the gravity or seriousness of the complaint set out in the information through communication.²¹

The opinion in *Sampat Lal* echoes the concern expressed by R.S. Pathak J in *Bandhua Mukti Morcha v. Union of India*²² for the judicial caution and circumspection in fashioning relief under PIL. It can hardly be disputed that a court can provide judicial remedies for abuses, maladministration and legislative omissions but it is beyond a court to take over the administration in the guise of correcting governmental error or excesses. In handling a PIL petition the most crucial matter for the court is to measure the “seriousness” of the PIL petitioner and to see whether he is actually the “champion” of the cause of the individual or the group he is representing. It is the responsibility of the court in such cases for ensuring that the party’s procedural behaviour remains that of an adequate “champion” of the public cause.

Sampat Lal indicates that the public mind may get greatly agitated or shaken by the mysterious deaths, false encounters, bride burning or gang rape, but the courts are not likely to be motivated easily and will be reluctant in ordering a parallel investigation unless they are fully satisfied that the statutory agency is not functioning properly.

Sampat Lal has been followed by the Delhi High Court in *Peoples Union for Democratic Rights v. Ministry of Home Affairs*,²³ popularly called the *Delhi Riots* case. As is well known, tragic events took place in Delhi between October 31, 1984 to November 3, 1984, following the assassination of Prime Minister Indira Gandhi by two members of her own body guard. Violence, arson, loot and murder were unleashed and while the nation was mourning the tragic assassination of the prime minister, the vultures of the society were making merry. Apprehending that it may not be possible to expect investigation and prosecution of the guilty being carried out by the police on its own and realising the need for an independent agency to investigate the crimes, two social action groups, Peoples Union for Democratic Rights and Peoples Union for Civil Liberties, moved the Delhi High Court to draw its attention on the problem of the security of the lives of a particular community and of their properties in Delhi.

The petitioners asked the High Court to (a) issue directions to appoint

²⁰ *Id.* at 199.

²¹ *Ibid.*

²² AIR 1984 SC 802.

²³ AIR 1985 Del. 268.

a commission of inquiry to carry out an investigation into the role of the police and political interference in the carnage, (b) direct the CBI or the Crime Branch to investigate and submit its report to the High Court, (c) direct the executive magistrates to take security measures for keeping peace in the troubled areas from the people (police and politicians) named by survivors in the petitioner's report and the report of the Delhi University teachers and in the statements and affidavit of the survivors, (d) direct to hold the identification parade of all the people named by the survivors so that valuable evidence is not lost, and (e) direct to debar those so identified from going to these areas for a period of at least six months so that an atmosphere of security and trust is created.

Yogeshwar Dayal and Kirpal JJ held that an inquiry by the court by appointing a commission of enquiry will not reveal more as it was almost conceded by the government that the extensive riots had resulted in death, looting and arson. The negligence of some police officers alleged in the writ petition had also been conceded and steps were being taken to punish them. According to the court, there was no basis to assume that the central government or the Delhi Administration were not alive to the grave situation or their statutory obligation. The appointment of a commission of enquiry by the court could only be on the basis that there had been no proper investigation.²⁴ For the similar reason, the court could not direct CBI or Crime Branch to investigate into the role of the police or politicians in the carnage that took place. The executive magistrates also could not be asked to take security measures for keeping peace in the areas from the people named by the survivors because no allegation was made in the petition that the complaint was made to the police in regard to those persons and no case had been registered against them. Similarly, no identification parade could be ordered as no one had any fundamental or legal right to get such a direction for keeping peace.²⁵

After extensive quotations from the concurring opinion of R.S. Pathak J in *Bandhua Mukti Morcha* Yogeshwar Dayal J observed:

The Court should have an attitude that they alone are protectors of the fundamental rights of citizens....Initial attitude of courts vis-a-vis executive organ of the state should not be of suspicionThe attitude ought to be of trust and not always of confrontationIt is the duty of the elected representatives to safeguard the interest of the citizens they represent and satisfy the democratic values of the people they represent.²⁶

Repeating the holding in *Sampat Lal*, the court observed that creating

²⁴ *Id.* at 281.

²⁵ *Id.* at 284.

²⁶ *Id.* at 278-79.

a new channel of inquiry would only cause permanent stigma on the entire police hierarchy and "will not alleviate the feelings of riot-stricken people but would rather exacerbate them."²⁷

Delhi Riots case is notable for great judicial deference to the role of the police and the politicians and to the executive wisdom in crisis management and in crime detection and punishment. It also offers the following lessons for the PIL activists:

(a) PIL should never be resorted to for political games by one party or the other. If the courts started entering into the political arena they will cause serious damage to the institution of judiciary.²⁸

(b) PIL is not meant to satisfy the curiosity of the court or the people but to provide relief to the poor and the victimized groups.²⁹

(c) The condition which must be fulfilled before PIL is entertained by the superior court is that the court should be in a position to give *effective* relief. If no *effective* or *complete* relief can be granted, *the court should not entertain PIL*.³⁰

(d) Though the courts have the power to give directions to the executive, they are ill-equipped to run the administration or improve the channels of administration.

(e) The court can order the appointment of commission of enquiry only to investigate into the existence of the facts in issue and to gather data, for example, the existence of bonded labour. Such commission can be appointed where there is denial of fundamental rights to the weaker sections of the society and where there is a need to gather facts and data in regard to the allegation of the breach of fundamental rights. But ordinarily, the courts will not appoint commissions to investigate into the commission of offences.³¹

VI PREVENTION OF ENVIRONMENTAL POLLUTION

In *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*,³² it was brought to the notice of the Supreme Court that the mining operations in certain limestone quarries were causing environmental and ecological imbalance to the detriment of the welfare of the people living in the Mussoorie Hill ranges. A committee appointed by the court reported that certain stone quarries were unsuitable for mining operations and recommended their closure. By an interim order, the mining operations carried out through blasting were stopped in those stone quarries

²⁷ *Id.* at 283.

²⁸ *Ibid.*

²⁹ *Id.* at 290.

³⁰ *Id.* at 279.

³¹ *Id.* at 282, 276.

³² AIR 1985 SC 652; *R.L. and E. Kendra v. State of U.P.*, AIR 1985 SC 1259.

which had adverse impact on safety and health.

The court realized that as a result of the order of the closure, the lessees of such quarries would be thrown out of business but it was a price that had to be paid for safeguarding the welfare of people. Through a series of orders the court specified the rights of the lessees. For example, to mitigate the hardship caused to these lessees, the central and state governments were directed to give priority to them in granting lease in other areas for limestone or dolomite quarries. The workmen thrown out of employment due to the closure were also to be given employment in the afforestation and soil conservation programmes to be taken up in these areas.

VII PREVENTING LIQUOR TRAGEDY

In *Dr. George Mampilly v. State of Kerala*,³³ a medical practitioner and a social action group called "Legal Forum to Uphold Public Causes" filed a petition before the Kerala High Court to prevent the state government from introducing the sale of arrack in polythene bags or containers. In certain parts of Kerala, there had been quite a number of deaths and also loss of eye sight by the consumption of adulterated poisonous arrack supplied in bulk to contractors through certain public sector undertakings. The Vypeen liquor tragedy had claimed the life of 70 persons. In its anxiety to prevent the recurrence of similar liquor tragedies, the government decided to sell arrack in polythene containers instead of bottles.

The petitioner's contention was that using the polythene sachets for packaging arrack was a serious health hazard. The argument had three limbs: (a) that certain fractional ingredients in alcohol might react with polythene film and produce toxic substance, (b) that the polythene dissolved in organic solvents, thereby inducing toxicity, and (c) that qualities of evaporation and inflammability attributed to arrack rendered the use of polythene sachets wholly unsafe.

It was also argued that under article 47, prohibition of consumption of liquor was an ideal in ensuring the rise in the level of nutrition and standard of living and improvement of public health and till that ideal was achieved, it was the duty of the state to mitigate, if not prevent, the evil effects of drinking by regulating the trade and consumption.

The Kerala High Court appointed an expert to investigate into these allegations. The expert showed that alcohol was slowly passing through the film and had a definite ill effect on the consumers. After quoting from *S.P. Gupta v. President of India*³⁴ and *Peoples Union for Democratic Rights v. Union of India*,³⁵ the court repelled the argument of the state that

³³ AIR 1985 Ker. 24.

³⁴ AIR 1982 SC 149.

³⁵ AIR 1982 SC 1473.

the petitioners had no *locus standi*. It was held that the petitioner was a medical practitioner and was obviously interested in promotion of public health. If the grievance projected were substantiated, it would clearly show that the governmental action would result in serious damage to public health and public order.

On the basis of this the court invalidated the action of the government to sell arrack in polythene sachets. It was held that the decision to sell arrack in polythene bags could have been arrived at only on serious consideration of all scientific and other questions arising from such use. Therefore, the decision of the government was arbitrary and violative of article 14.

The court directed the government not to use polythene sachets for packaging arrack until after proper investigation and research.

VIII PRESERVATION OF CULTURAL HERITAGE

In *B.V. Narayan Reddy v. State of Karnataka*³⁶ the question before the Karnataka High Court was whether certain respectable citizens of Bangalore city had *locus standi* to move the court to prevent the demolition of an ancient building called "Attara Cutchery" and to declare it as a "protected monument". The petitioners argued that the people of Bangalore city cherished that building as a cultural heritage and as an enduring source of enrichment of the environmental beauty and the cultural tone of the city. They wanted that the building should not be demolished for the construction of a new High Court building.

The Karnataka High Court agreed that the petitioners had standing to invoke its jurisdiction. But the court refused to intervene in the controversy as to whether or not a particular building is required to be pulled down and new building erected in its place or not. The court was of the view that the judiciary should not enquire into the wisdom, expediency or reasonableness of administrative acts. In the choice between old world values and pragmatic demands of urbanisation, executive wisdom must prevail.

IX CONCLUSION

This survey portrays the significant trends in the area of PIL. We have seen that the judges are now frankly admitting the limits of the liberational potentials of PIL. They are saying that in PIL cases, the courts can, of course, exert some pressure and influence the use of power but it is beyond them to supervise the executive functions or to improve the channels of administration. The courts will surely intervene if the executive is remiss in discharging its constitutional or statutory obligations or is insensitive to the human values but it is beyond them to usurp the administrative func-

³⁶ AIR 1985 Kant. 99.

tions. PIL is a good strategy to remind the government of its failings and lapses but it is beyond the courts to force the executive to initiate a particular ameliorative or social legislation. The 1985 cases especially *Olga Tellis* and *Delhi Riots* show that openings for favourable interpretation are plentiful and through PIL the courts can very well engage themselves in mass production of rights and entitlements to the poor and the victimized but they shrink from affirmative enforcement of these reconceptualized rights and entitlements. Yet PIL provides potentials to the new advocacy groups to take initiative in the courts to secure enforcement or implementation of the new rights and entitlements and generate a political movement that would make government responsive to judicial proddings.

The judges have now started saying that PIL activism is not meant to satisfy the curiosity of the people about the role of police, politicians or administrators. It is meant to provide effective and complete relief to the victimized groups but if no effective or complete relief can be given, the courts will not respond. Perhaps there is a growing apprehension among a few judges that too much intrusion into political and administrative functions will not only generate political heat but also lead to institutional disarray, tarnishing the image of judiciary.

The real accomplishment of PIL, therefore, would lie in a sustained activist monitoring of government but this kind of monitoring would seem to be both ideologically uncongenial and institutionally discomfiting, given the realities of litigation in India against powerful adversaries. The 1985 cases show that the real barriers to improvement of the conditions of the poor and exploited are beyond the reach of even the most well-disposed and capable judiciary. For the people like slum and pavement dwellers of the city of Bombay remedying injustice through PIL would remain a mere tempting illusion.