

ARTICLE: Part II Equality, Social Exclusion, and Women's Rights: Redressing Women's Rights Violations Through the Judiciary *

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Author: Avani Mehta Sood **

** J.D., Yale Law School (2003); B.A., Princeton University (1999). The author is currently pursuing a Ph.D. in Social Psychology at Princeton University. Many thanks to all the interviewees in India for generously sharing their time, knowledge, and experiences, and to all those who provided feedback on this research. Correspondence should be directed to avani@aya.yale.edu.

LexisNexis Summary

... The other branches of government have generally tolerated -- and, in some cases, even implicitly welcomed -- the judiciary's PIL activism, especially when it has enabled politicians to abdicate responsibility and insulate themselves from sensitive issues by claiming that they had no choice but to comply with the Court's orders. ... LEGAL FRAMEWORK The potential for promoting gender justice in India through the PIL vehicle is buttressed by the rich legal sources upon which petitioners can draw for this purpose, including a constitution that guarantees a large number of judicially enforceable rights and major international treaties that obligate the Indian government to respect and protect women's rights. ... The Constitution of India, which came into effect in 1950 and has since been "the conscience of the Nation and the cornerstone of the legal and judicial system," contains twenty-two parts -- including Part III's legally enforceable Fundamental Rights that define the basic human rights of all citizens, and Part IV's Directive Principles of State Policy that list non-justiciable guidelines for the government to apply when framing laws and policies. ... A comprehensive review of the political, legal, and scholarly discourse surrounding the personal law system is beyond the scope of this Article, but it bears noting that the Court's failure to "test personal laws on the touchstone of fundamental rights" limits its ability to enforce gender equality through PIL. ... Verma, described Bhanwari Devi's gang rape as an illustration of "the hazards to which a working woman may be exposed," "the depravity to which sexual harassment can degenerate," and the urgent need "for safeguards by an alternative mechanism in the absence of legislative measures." ... According to Justice Verma, the other branches of government seem to have "indirectly accepted" the Vishaka Court's guidelines, because the executive branch has been implementing them and Parliament has not yet replaced them with legislation. ... Delays inherent in pursuing justice through the courts are a major disincentive for rights advocates, and petitioners have even sought to withdraw PIL actions for this reason.

Text

[*137] I. INTRODUCTION

India's emergence as a leading player in international business and politics is increasingly drawing global attention to the nation's approach toward redressing and preventing violations of fundamental human rights, including the rights of women. This Article examines the potential for promoting gender justice through the Supreme Court of India's enterprising Public Interest Litigation ("PIL") mechanism -- a judicially created procedural vehicle through which any individual or organization concerned with ongoing rights violations can bring an action directly in the country's highest court against the national and state governments of India.¹ Through PIL, the Court has actively addressed issues of public concern and prodded the other branches of government into fulfilling their obligations.

* * Portions of this Article are adapted from Gender Justice Through Public Interest Litigation -- Case Studies from India, 41 [VAND. J. TRANSNAT'L L. 833 \(2008\)](#) and LITIGATING REPRODUCTIVE RIGHTS: USING PUBLIC INTEREST LITIGATION AND INTERNATIONAL LAW TO PROMOTE GENDER JUSTICE IN INDIA (2006).

¹ The Supreme Court of India will hereafter be referred to as "the Court."

This Article aims to make a unique contribution to the discourse on PIL by presenting a case study of *Vishaka v. Rajasthan* -- a landmark PIL action for women's rights, and by drawing upon a range of perspectives gathered through in-depth interviews with approximately sixty-five stakeholders in the PIL process, including: leading public interest lawyers; human rights activists; former and current Supreme Court Justices and high court judges; social scientists; journalists; underprivileged women; and senior officials at the National Human Rights Commission, the National Commission for Women, and the Law Commission of India.² The case study, primary research, and legal analysis presented herein suggest that the procedurally [*138] flexible PIL vehicle can be well applied to advance the rights of women who would otherwise have little to no access to the justice system. However, the success of this endeavor will depend largely upon committed efforts by the Court to enforce women's constitutional rights independent of societal gender biases and within the boundaries of the separation-of-powers doctrine.

II. PUBLIC INTEREST LITIGATION IN INDIA

A. The PIL Mechanism

The development of PIL was spearheaded in the late 1970s and 1980s through a series of decisions issued by the Indian Supreme Court.³ Through PIL, the Court has addressed a wide range of human rights issues, including rights abuses suffered by women. In contrast to some of the other groups in India that have also historically been targets of discrimination, such as religious minorities and lower castes, women have not been as politically mobilized to bargain in an electoral setting or to raise the resources necessary to support struggles through the adversarial judicial process.⁴ The development of PIL is therefore of critical importance to the advancement of gender justice in India.

The key feature of PIL is its liberalization of the traditional rule of locus standi, or standing, which requires litigants to have suffered a legal injury in order to maintain an action for judicial redress. In a 1980 decision that has been hailed as "a charter of PIL,"⁵ the Court articulated the following rule:

[If] such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ . . . seeking judicial redressal for the legal wrong or injury⁶

[*139] The Court has made it clear, however, that "[t]he lowering of the locus standi threshold does not involve the recognition or creation of any vested rights on the part of those who initiate the proceedings."⁷

The Court derives its jurisdiction over PIL actions from Article 32 of the Constitution of India.⁸ Thus, PIL petitions must be based on constitutional claims and can be brought only against the state, not private parties. "Public interest litigation, as we conceive it, is essentially a *cooperative or collaborative effort* on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and

² The author conducted the interviews for this research between December 2005 and August 2006 in New Delhi, Mumbai, and at the National Judicial Academy in Bhopal.

³ See, e.g., *M.C. Mehta v. Union of India*, (1987) 1 S.C.R. 819, para. 3; *Bandhua Mukti Morcha v. Union of India*, (1984) 2 S.C.R. 67, para. 13; *People's Union for Democratic Rights v. Union of India*, (1983) 1 S.C.R. 456, para. 2; *S.P. Gupta v. Union of India*, (1982) 2 S.C.R. 365, para. 17; *Fertilizer Corp. Kamgar Union v. Union of India*, (1981) 2 S.C.R. 52, para. 11; S.P. Sathe, *Judicial Activism: The Indian Experience*, 6 *WASH. U. J.L. & POL'Y* 29 (2001).

⁴ See Interview with Fali Nariman, Senior Supreme Court Advocate and former Additional Solicitor General of India, in New Delhi, India (Mar. 10, 2006); Interview with Dr. Sarojini Vasaria, Women's Rights Activist, in New Delhi, India (Apr. 12, 2006).

⁵ *Jantaa Dal v. H.S. Chowdhary*, (1992) Supp. 1 S.C.R. 226, paras. 95-96.

⁶ *S.P. Gupta*, (1982) 2 S.C.R. 35, para. 17.

⁷ *Sheela Barse v. Union of India*, (1988) Supp. 2 S.C.R. 643, para. 11.

⁸ INDIA CONST. art. 32, § 1; see *People's Union for Democratic Rights*, (1983) 1 S.C.R. 456, para. 11.

privileges," the Court has explained.⁹ In reality, however, governmental respondents, especially at the state level, have been resisting PIL petitions with increasing "vigor and legal maneuvering" due to "experience and concern about the expense of complying with the Court's anticipated remedial orders."¹⁰

In contrast to traditional adversarial litigation, the Court has described its position in PIL actions as follows: "[T]he court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the proceedings, moulding of the relief and . . . supervising the implementation."

¹¹ Through PIL orders, the Court has asked the legislature to enact or reform laws, and has directed the executive to introduce new measures or more strictly enforce existing policies.¹² Justices have even themselves enacted guidelines "to fill the vacuum in existing legislation," as seen in the upcoming *Vishaka* case study and in PIL actions challenging adoption and child labor practices in India.¹³ Furthermore, the Court has actively involved itself in administrative and regulatory matters by issuing detailed directives in PIL [*140] actions, as seen in recent cases on environmental protection and distribution of food to the needy.¹⁴

B. Effects of the Court's PIL Activism

The judiciary's activism through PIL has been regarded largely as an effort to compensate for the inaction of the legislative and executive branches of government.¹⁵ During recent parliamentary debates, legislators acknowledged that "politicians and the bureaucrats are losing ground among the public,"¹⁶ and "the common man on the street . . . feels very much let down by the Executive and the Legislature and he thinks that it is the Judiciary which is actually dispensing him justice."¹⁷ The PIL mechanism has thus been described as "an alarm clock" that prods the other

⁹ *People's Union for Democratic Rights v. Union of India*, (1983) 1 S.C.R. 456, para. 2 (emphasis added).

¹⁰ Susan D. Susman, *Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation*, [13 WIS. INT'L L.J. 57, 77-78 \(1994\)](#); see Interview with Fali Nariman, *supra* note 4.

¹¹ *Sheela Barse*, (1982) 2. S.C.R. 35, para. 12.

¹² CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* 86 (1998).

¹³ *Vishaka v. State of Rajasthan*, (1997) Supp. 3 S.C.R. 404, para. 2; see *Lakshmi Kant Pandey v. Union of India*, (1984) 2 S.C.C. 244 (establishing regulations for adoption); Shubhankar Dam, *Lawmaking Beyond Lawmakers: Understanding the Little Right and the Great Wrong*, [13 TUL. J. INT'L & COMP. L. 109, 117 \(2005\)](#); Sathe, *supra* note 3, at 85.

¹⁴ See, e.g., EPP, *supra* note 12, at 86 (providing examples of Court's "extended and detailed policy prescriptions for government officials to fulfill"); Dam, *supra* note 13, at 118 (discussing Court's "super-executive" role); Susman, *supra* note 10, at 79-80 (providing examples of Court's "detailed prescriptive remedies" in PIL cases); Armin Rozenzanz & Michael Jackson, *The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power*, [28 COLUM. J. ENVTL. L. 223, 225 \(2003\)](#) (discussing Court's "usurping" of "the authority of enforcement agencies designed to handle to air pollution problem"); Right to Food Campaign, *Legal Action for the Right to Food: Supreme Court Orders and Related Documents*, <http://www.righttofoodindia.org/orders/interimorders.html> (last visited Mar. 27, 2009) (listing and summarizing interim orders from PIL action on the right to food, *People's Union for Civil Liberties v. India*, W.P. (Civ.) No. 196/2001).

¹⁵ See *Bandhua Mukti Morcha v. Union of India*, (1984) 2 S.C.R. 67, para. 72; Dam, *supra* note 13, at 124; Parvez Hassan & Azim Azfar, *Securing Environmental Rights Through Public Interest Litigation in South Asia*, [22 VA. ENVTL. L.J. 215, 223](#); Interview with Justice D.Y. Chandrachud, Judge, High Court of Bombay, in Mumbai, India (Mar. 16, 2006); Confidential Interviews with multiple High Court Judges at National Judicial Academy Symposium, in Bhopal, India (Apr. 15, 2006) [hereinafter Interviews with High Court Judges]; Interview with Legal Editor of Major National Newspaper, in New Delhi, India (Apr. 9, 2006) [hereinafter Interview with Legal Editor]; Interview with Fali Nariman, *supra* note 4; Interview with Justice M.J. Rao, Retired Justice, Supreme Court of India & Chairperson, Law Commission of India, in New Delhi, India (Apr. 11, 2006); Interview with Justice Leila Seth, retired Chief Justice, High Court of Himachal Pradesh, in Noida, India (Apr. 10, 2006); Interview with Rohan Thawani, Supreme Court Advocate, in New Delhi, India (Mar. 24, 2006).

¹⁶ Lok Sabha Debates, Fourteenth Series, Vol. XXXI, Twelfth Session, No. 13, Dec. 3, 2007/Agrahayana 12, 1929 (Saka) [hereinafter Lok Sabha Debates of Dec. 3] (statement of Shri Prasanna Acharya).

¹⁷ Lok Sabha Debates, Fourteenth Series, Vol. XXXI, Twelfth Session, No. 14, Dec. 4, 2007/Agrahayana 13, 1929 (Saka) [hereinafter Lok Sabha Debates of Dec. 4] (statement of Shri Kharabela Swain (Balasore)).

branches of government into "waking up" and fulfilling their obligations,¹⁸ and this role has [*141] helped the Court build a strong base of public support.¹⁹ Prime Minister Manmohan Singh has applauded the "impressive and enviable reputation" of the Court, describing it as "a shining symbol of the great faith our people have in our judiciary."²⁰

However, a critical danger inherent in the broad power and popularity of PIL is the resulting tendency toward judicial overreaching. The legislative or executive nature of some judicial orders has sparked objections that the Court has violated the separation-of-powers doctrine by "trespassing" into the territory of other branches "under the guise of PIL."²¹ Critics -- including some Supreme Court Justices -- point out that unlike legislators, judges are not elected officials, are not directly accountable representatives of the people, and cannot hold wide consultations with various stakeholders before enacting a law.²² Similarly, the judiciary often lacks the comprehensive understanding of governmental resources and realities on the ground necessary for making administrative decisions.²³ Unrestrained judicial encroachment upon the legislative and executive realms could "boomerang" and ultimately make the Court a less powerful institution by reducing its credibility,²⁴ particularly when "[j]udicial forays into policy issues through trial and error, without necessary technical inputs or competence, [result] in unsatisfactory orders that have . . . passed beyond 'judicially manageable standards.'"²⁵

The other branches of government have generally tolerated -- and, in some cases, even implicitly welcomed -- the judiciary's PIL activism, especially when it has enabled politicians to abdicate responsibility [*142] and insulate themselves from sensitive issues by claiming that they had no choice but to comply with the Court's orders.²⁶ Court-imposed directives and deadlines also empower proactive members of the executive and legislative branches to make change a priority among their colleagues.

Nevertheless, an extensive level of judicial intervention through PIL can become a threat. The harmonious functioning of the three branches of government was a topic of heated debate during the December 2007 session of the Lok Sabha, the directly-elected lower house of the Parliament of India. Numerous legislators expressed concern about judicial over-activism and called for greater judicial accountability and respect for the separation-of-powers doctrine.²⁷ One legislator acknowledged, however, that the other branches are contributing to the problem by supporting the judiciary's interference when it suits their needs: "In one case we define judicial activism in one way and in another case, we define judicial activism in another way. I think this opportunistic stand of the [m]embers of the political parties

¹⁸ Interview with Justice Y. Singh, Judge, High Court of Allahabad, in Bhopal, India (Apr. 15, 2006); *see also* Interview with Legal Editor, *supra* note 15.

¹⁹ *See* EPP, *supra* note 12, at 80-81; Sathe, *supra* note 3, at 89; Confidential Interview with Sitting Justice, Supreme Court of India, in New Delhi, India (Apr. 13, 2006); Interview with Legal Editor, *supra* note 15; Interview with Development Expert, Population Foundation of India, in New Delhi, India (Mar. 7, 2006) [hereinafter Interview with Development Expert]; Confidential Interviews with Low-Income Women Residing in Urban Slums in New Delhi, India (Mar. 23, 2006 & Apr. 10, 2006); Interview with Justice Leila Seth, *supra* note 15; Interviews with High Court Judges, *supra* note 15.

²⁰ Manmohan Singh, "Has the Pendulum Swung to the Other Extreme," OUTLOOK, Mar. 11, 2006, <http://www.outlookindia.com/full.asp?fodname=20060311&fname=manmohan&sid.=> (originally delivered as an Address at the Conference of Chief Ministers & Chief Justices of High Courts).

²¹ Interview with Justice M.J. Rao, *supra* note 15; *see* Dam, *supra* note 13, at 127; Sathe, *supra* note 3, at 88-89.

²² Interview with Rohit De, Indian Law and History Researcher, in New Haven, Conn., U.S. (May 12, 2006); Interview with Justice M.J. Rao, *supra* note 15; *see* *Bandhua Mukti Morcha v. Union of India*, (1984) 2 S.C.R. 67, para. 74; Dam, *supra* note 13, at 119-22.

²³ B.N. Srikrishna, *Skinning a Cat*, (2005) 8 S.C.C. 3.

²⁴ E-mail from Rohan Thawani, Supreme Court Advocate, to author (Aug. 22, 2006) (on file with author); *see* Interview with Justice M.J. Rao, *supra* note 15.

²⁵ Srikrishna, *supra* note 23, at 21; *see* Sathe, *supra* note 3, at 88-89.

²⁶ Sathe, *supra* note 3, at 89; Interview with Judicial Law Clerk, Supreme Court of India, in New Delhi, India (Mar. 26, 2006) [hereinafter Interview with Law Clerk]; Interview with Justice Leila Seth, *supra* note 15.

²⁷ *See, e.g.*, Lok Sabha Debates of Dec. 3, *supra* note 16 (statements of Shri Shaheen (Baramulla), Shri Panda (Jagatsinghpur), Shri Radhakrishnan (Chirayinkil), Shri Deo).

is encouraging the judiciary to encroach upon our areas.”²⁸ The executive branch has acknowledged these concerns as well. In speeches addressing the judiciary, Prime Minister Singh has cautioned that “the dividing line between judicial activism and judicial over-reaching is a thin one,”²⁹ and that “[a] balanced approach in taking up PIL cases will continue to keep PIL as a potent tool for rectifying public ills.”³⁰

III. LEGAL FRAMEWORK

The potential for promoting gender justice in India through the PIL vehicle is buttressed by the rich legal sources upon which petitioners can draw for this purpose, including a constitution that guarantees a large number of judicially enforceable rights and major international treaties that obligate the Indian government to respect and protect women’s rights. The present Article will confine its discussion to select relevant constitutional provisions that the Court has [*143] broadly interpreted and applied to advance gender equality, albeit with certain limitations.

The Constitution of India, which came into effect in 1950 and has since been “the conscience of the Nation and the cornerstone of the legal and judicial system,” contains twenty-two parts -- including Part III’s legally enforceable Fundamental Rights that define the basic human rights of all citizens, and Part IV’s Directive Principles of State Policy that list non-justiciable guidelines for the government to apply when framing laws and policies.³¹ The Fundamental Rights most relevant to securing gender justice through PIL are Article 14’s equality provision, Article 15’s prohibition of sex discrimination, and Article 21’s protection of life and personal liberty. Fali Nariman, who has played the roles of petitioners’ lawyer, government lawyer, and amicus in PIL cases, has noted, “[t]he Indian Constitution is a very fine constitution because it enables courts to lay down parameters for a great enhancement of women’s rights in various fields of activity.”³²

A. Equality & Nondiscrimination

Commenting on Article 14’s potential for promoting gender justice, Indira Jaising, a leading litigator of women’s rights in India, has observed: “Its brevity enhances its omnipotence, enabling creative judges to read within it equality of results. . . . [T]he Constitution left it to the courts to give life to the equality code.”³³ The complementary Article 15 prohibits the state from discriminating against any citizen “on grounds only of . . . sex,” and includes a clause permitting the state to make “any special provision for women and children.”³⁴ Together, Articles 14 and 15 provide a strong legal basis for PIL petitions seeking to enforce women’s rights. Their application has been limited, however, by the Court’s occasionally paternalistic interpretations [*144] and its deference to discriminatory religion-based personal laws.

For example, women’s rights advocates have objected to the language of Article 15 because “[t]he use of the word ‘only’ in this Article has enabled the courts to segregate sex from gender and uphold blatantly discriminatory

²⁸ *Id.* (statement of Shri Prasanna Acharya).

²⁹ Sandeep Phukan, *PM Sends out Strong Message to Judiciary*, NDTV.COM, Apr. 8, 2007, <http://www.ndtv.com/convergence/ndtv/story.aspx?id=NEWEN20070008083>; see Lok Sabha Debates of Dec. 4, *supra* note 17 (statement of Shri H.R. Bhardwaj).

³⁰ Singh, *supra* note 20.

³¹ P.D. MATHEW, CONSTITUTION OF INDIA SIMPLIFIED 1 (2004); see INDIA CONST. arts. 12-51; arts. 37, 38, § 2, 39, cls. (d) & (e), 39A, 42, 47. Also relevant to PIL actions for the enforcement of women’s rights are the Constitution’s Fundamental Duties, which call upon citizens to, inter alia, “abide by the Constitution and respect its ideals” and “renounce practices derogatory to the dignity of women.” INDIA CONST. art. 51A, cls. (a) & (e). Although the Fundamental Duties are not directly justiciable, the Court “has in several cases relied on [them] to determine the duty of the State, and when necessary, given directions or frame[d] guidelines to achieve this purpose.” MINISTRY OF HUMAN RES. DEV., FUNDAMENTAL DUTIES OF CITIZENS 12 (1999).

³² Interview with Fali Nariman, *supra* note 4.

³³ Indira Jaising, *Gender Justice and the Supreme Court*, in SUPREME BUT NOT INFALLIBLE: ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 288, 293-94 (B.N. Kirpal et al. eds., 2000).

³⁴ INDIA CONST. art. 15, §§ 1 & 3; see Catherine A. MacKinnon, *Sex Equality Under the Constitution of India: Problems, Prospects, and “Personal Laws,”* 4 INT’L J. CONST. L. 181, 191-92 (2006).

legislation.”³⁵ In the 1982 *Air India v. Meerza* decision, the Court upheld a regulation requiring air hostesses of a government-owned airline to retire if they got married within four years of being employed -- a condition that was not imposed on their male counterparts, assistant flight pursers (“AFPs”).³⁶ The judgment concluded that this was not sex-based discrimination because different “rules, regulations and conditions of service” applied to the male and female positions,³⁷ and “the Constitution’s equality provisions prohibit discrimination ‘only on the ground of sex,’ but do not prohibit discrimination ‘on the ground of sex coupled with other considerations.’”³⁸ The Court’s application of formal equality theory in this case has been criticized for its “circular reasoning,” given that male AFPs were treated as an “entirely separate class” because they had been given arguably preferential career opportunities in the first place.³⁹ Additionally, illustrating the judiciary’s tendency to reinforce paternalistic gender norms, the *Air India* Court asserted that the restriction was neither unreasonable nor arbitrary because requiring air hostesses to delay marriage until they were “fully mature” would, inter alia, improve their health and their chances of a successful marriage.⁴⁰

The Court has particularly faltered in defending women’s constitutional rights to equality and nondiscrimination in the context of India’s religion-based personal laws, which govern matters such as marriage, divorce, and inheritance in place of a uniform national civil code.⁴¹ Judges have avoided striking down gender-biased personal laws as unconstitutional by instead straining to interpret them in ways that neutralize their discriminatory effect -- often compromising the rights of women in the process.⁴² As senior advocates have [*145] observed, “[d]espite its many brave words and its otherwise strong pitch for gender justice . . . the Supreme Court has wavered to avoid being mired in controversies over the much needed reform of personal laws.”⁴³ A comprehensive review of the political, legal, and scholarly discourse surrounding the personal law system is beyond the scope of this Article, but it bears noting that the Court’s failure to “test personal laws on the touchstone of fundamental rights” limits its ability to enforce gender equality through PIL.⁴⁴

B. Right to Life

Attempts to promote gender justice through PIL can also be substantiated by Article 21’s protection of “life or personal liberty.”⁴⁵ PIL rulings have repeatedly stated that the right to life “does not connote mere animal existence or continued drudgery through life,” but rather, implies a right to live with human dignity and “all that goes along with it.”⁴⁶ In this context, the act of rape has been judicially recognized as a violation of the fundamental constitutional

³⁵ Jaising, *supra* note 33, at 294.

³⁶ *Air India v. Meerza*, (1982) 1 S.C.R. 438, paras. 62, 64.

³⁷ *Id.* paras. 44-49, 57, 60.

³⁸ *Id.* para. 68.

³⁹ *Id.* para. 60; Eileen Kaufman, *Women and Law: A Comparative Analysis of the United States and Indian Supreme Courts’ Equality Jurisprudence*, [34 GA. J. INT’L & COMP. L. 557, 598 \(2006\)](#); see Jaising, *supra* note 33, at 294, 297.

⁴⁰ *Air India*, (1982) 1 S.C.R. 438, paras. 80-81.

⁴¹ P. D. MATHEW & P. M. BAKSHI, HINDU MARRIAGE AND DIVORCE 1 (2005).

⁴² See, e.g., *Githa Hariharan v. Reserve Bank of India*, (1999) 1 S.C.R. 669, paras. 24-25 (case challenging Hindu Minority and Guardianship Act’s provision that a mother can be the legal guardian of her child only “after” the father); *Madhu Kishwar v. State of Bihar*, (1996) Supp. 1 S.C.R. 442 (PIL case challenging discriminatory tribal property succession law); MADHU KISHWAR, OFF THE BEATEN TRACK: RETHINKING GENDER JUSTICE FOR INDIAN WOMEN 37-54 (2002) (recounting experience as PIL petitioner in the *Kishwar v. State of Bihar* case).

⁴³ Rajeev Dhavan & Fali S. Nariman, *The Supreme Court and Group Life: Religious Freedom, Minority Groups and Disadvantaged Communities*, in SUPREME BUT NOT INFALLIBLE, *supra* note 33, at 256, 274.

⁴⁴ *Id.*; see Marc Galanter & Jayanth Krishnan, *Personal Law and Human Rights in India and Israel*, [34 ISR. L. REV. 101, 106-11 \(2000\)](#); MacKinnon, *supra* note 34, at 131.

⁴⁵ INDIA CONST. art. 21.

⁴⁶ *Consumer Education & Research Centre v. Union of India*, (1995) 1 S.C.R. 626, para. 24; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 2 S.C.R. 516, para. 8.

right to life with dignity.⁴⁷ Through PIL, the Court has also broadly interpreted Article 21 to encompass various socioeconomic rights, such as rights to education, work, shelter, medical care, food, clean water, and an unpolluted environment. In recent PIL actions, women's rights advocates have invoked Article 21 to call for greater government involvement in combating child marriages⁴⁸ and coerced or unsafe sterilization practices.⁴⁹

Many have applauded the judiciary for dramatically expanding rights through its generous reading of Article 21, but this expansion has also been the subject of criticism. The Court has been accused of [*146] having used Article 21 "as some kind of cornucopia for everything."⁵⁰ Even those who strongly support the broad application of the Constitution to promote human rights warn that it is "not a very wise juristic concept to pin everything onto Article 21," because "the Court has given that Article too much ballast -- something that it cannot possibly bear,"⁵¹ and because it is dangerous for the judiciary to create expectations that it may not be able to fulfill.⁵²

C. Directive Principles

Unlike the Fundamental Rights, the Constitution's Directive Principles are not directly justiciable -- one cannot bring a PIL action on the ground that the government has violated a Directive Principle. Nevertheless, the Court has made it clear that the government's obligation to incorporate the Directive Principles into its policies "is not idle print but command to action."⁵³ To this end, the judiciary has used its broad PIL and constitutional powers to read the Directive Principles into its interpretations of the Fundamental Rights provisions.⁵⁴ Thus, through PIL, the distinction between legally enforceable civil-political constitutional rights and nonjusticiable socioeconomic rights is gradually disappearing.⁵⁵

This trend creates more leeway for advancing gender justice through the judiciary, because the two categories of rights are often interdependent in cases involving disempowered women. However, critics have expressed concern about the Court using the PIL vehicle to enforce rights inherent in the Directive Principles "irrespective of the availability of resources."⁵⁶ In this context, too, the judiciary must consistently be wary of weakening its credibility by overstepping its jurisdictional bounds.

IV. CASE STUDY: VISHAKA V. RAJASTHAN

The strong potential for promoting gender justice through PIL is evidenced by a close study of an important 1997 Supreme Court PIL [*147] action -- *Vishaka v. State of Rajasthan* -- that addressed the issue of sexual harassment in the workplace.⁵⁷ *Vishaka* has been described by former Justice Ruma Pal, the last female member of the Supreme Court, as "one of the more notable successes of judicial action in redressing violence against women,"⁵⁸

⁴⁷ *Chairman, Railway Board v. Chandrima Das*, (2000) 1 S.C.R. 480, paras. 12, 14, 43.

⁴⁸ *Forum for Fact Finding Documentation & Advocacy v. Union of India*, W.P. (Civ.) No. 212/2003 (Apr. 25, 2003) (India).

⁴⁹ *Ramakant Rai v. Union of India*, W.P. (Civ.) No. 209/2003 (Jan. 3, 2005) (India).

⁵⁰ Interview with Justice B.N. Srikrishna, Justice, Supreme Court of India, in New Delhi, India (Mar. 8, 2006).

⁵¹ Interview with Fali Nariman, *supra* note 4.

⁵² Interview with Justice D.Y. Chandrachud, *supra* note 15.

⁵³ *Fatehchand Himmatlal v. Maharashtra*, (1977) 2 S.C.R. 828, para. 22.

⁵⁴ See, e.g., *Randhir Singh v. Union of India*, (1982) 3 S.C.R. 298; see EPP, *supra* note 12, at 87; Dam, *supra* note 13, at 114, 116; Interview with Justice D.Y. Chandrachud, *supra* note 15; Interview with Justice J.S. Verma, Retired Chief Justice, Supreme Court of India, in Noida, India (Mar. 29, 2006).

⁵⁵ Interview with Justice D.Y. Chandrachud, *supra* note 15.

⁵⁶ Interview with Justice M.J. Rao, *supra* note 15.

⁵⁷ *Vishaka v. State of Rajasthan*, (1997) Supp. 3 S.C.R. 404,

⁵⁸ Ruma Pal, *Redress for Violence against Women in India: The Successes and Failures of Judicial Action*, 8 DEVELOPING HUM. RTS. JURISPRUDENCE 1, 7 (1998).

and recognized by the United Nations' Committee on the Elimination of Discrimination Against Women as a "landmark judgment [in India's] tradition of public interest litigation."⁵⁹

A. Background

The *Vishaka* PIL case arose out of the gang rape of Bhanwari Devi, a member of a group of women called *sathins*, who are trained by the local government to do village-level social work for honorarium compensation. As part of a governmental campaign against child marriage, Bhanwari Devi attempted to stop the marriage of a one-year-old girl in rural Rajasthan. Members of the local community retaliated first by harassing Bhanwari Devi with threats and imposing a socioeconomic boycott on her family. Then, on September 22, 1992, five men raped Bhanwari Devi in the presence of her husband.⁶⁰ Bhanwari Devi faced numerous obstacles from the police and governmental health facilities when she attempted to seek justice.⁶¹ Although the National Commission for Women concluded after a detailed inquiry that "all evidence proved beyond any doubt that the victim . . . was gang raped,"⁶² the Rajasthan state criminal court acquitted the five defendants of the rape charge because, among other things, the judge did not find it credible that upper caste men would rape a lower caste woman.⁶³

Frustrated by the criminal justice system's inability to provide tangible remedies, restore the dignity of the victim, address systemic issues, or create widespread social change, Naina Kapur, a lawyer who had attended the unsuccessful criminal trial, decided to initiate a PIL action in the Supreme Court to challenge sexual harassment in [*148] the workplace.⁶⁴ The action was premised on the argument that although Bhanwari Devi repeatedly reported the months of exhibitionism and sexual harassment to which she was exposed through her work, the state made no attempts to protect her or to administer medical and legal redress for the violence she experienced.⁶⁵ The petitioners then demonstrated a pattern of such rights abuses by providing examples of five other women who had experienced sexual assault in the course of governmental employment.⁶⁶

The *Vishaka* writ petition was filed in 1992, in the names of five non-governmental organizations as petitioners, against the State of Rajasthan, its Women and Child Welfare Department, its Department of Social Welfare, and the Union of India. True to the collaborative ambition of the PIL vehicle, the outcome in the case was the product of cooperation from the government and collective progress made by the parties at each hearing.⁶⁷ Both sides submitted proposed judicial directions,⁶⁸ and although the respondents did put up some resistance along the way, it was not on the question of sexual harassment, but rather, against the Court's bold application of international law.⁶⁹ On the whole, the petitioning lawyers felt they were "not battling the government" in this case.⁷⁰

⁵⁹ Committee on the Elimination of Discrimination Against Women, *Concluding Observations, India*, P 34, U.N. Doc. A/55/38 (Jan. 2, 2000).

⁶⁰ Writ Petition (Cr.) paras. 3, 31-37, *Vishaka v. State of Rajasthan*, Nos. 666-70/1992 (1992) (India); Saira Kurup, *Four Women India Forgot*, TIMES OF INDIA, May 7, 2006, <http://timesofindia.indiatimes.com/articleshow/1519056.cms>.

⁶¹ Writ Petition, *supra* note 60, paras. 43-58.

⁶² *Id.* at para. 65.

⁶³ Pal, *supra* note 58, at 3 (citing unreported decision of the Rajasthan trial court dated Nov. 15, 1995).

⁶⁴ Interview with Naina Kapur, Director, Sakshi, in New Delhi, India (Apr. 10, 2006).

⁶⁵ Writ Petition, *supra* note 60, paras. 1-2, 12, 31-39; Interview with Naina Kapur, *supra* note 64.

⁶⁶ Writ Petition, *supra* note 60, paras. 67-72; Interview with Naina Kapur, *supra* note 64.

⁶⁷ *Vishaka v. State of Rajasthan*, (1997) Supp. 3 S.C.R. 404, para. 9; Interview with Justice J.S. Verma, *supra* note 54. The five petitioning organizations were Vishaka, Mahila Purnvas Samou, Rajasthan Voluntary Health Association, Kali for Women, and Jagori.

⁶⁸ Proposed Directions of Petitioners, *Vishaka v. State of Rajasthan*, W.P. (Cr.) Nos. 666-70/1992 (1992) (India); Guidelines Suggested by the Government, *Vishaka v. State of Rajasthan*, W.P. (Cr.) Nos. 666-70/1992 (1996) (India); Interview with Naina Kapur, Director, Sakshi, in New Delhi, India (Aug. 29, 2006).

⁶⁹ Interview with Naina Kapur, *supra* note 64; Interview with Fali Nariman, *supra* note 4.

⁷⁰ Interview with Naina Kapur, *supra* note 64.

B. Judgment

A three-judge bench of the Supreme Court delivered the *Vishaka* judgment on August 13, 1997. The decision, written by then-Chief Justice J.S. Verma, described Bhanwari Devi's gang rape as an illustration of "the hazards to which [a] working woman may be exposed," "the depravity to which sexual harassment can degenerate," and the urgent need "for safeguards by an alternative mechanism in the absence of legislative measures."⁷¹

[*149] Incorporating a broad reading of the Constitution, the *Vishaka* judgment recognized sexual harassment as "a clear violation" of the fundamental constitutional rights to equality, nondiscrimination, life, and liberty, as well as the right to carry out any occupation.⁷² In addition, the Court invoked the Constitution's Directive Principle requiring the state to secure just and humane conditions of work and maternity relief.⁷³ The *Vishaka* Court also drew heavily upon international law, quoting relevant provisions of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the CEDAW Committee's General Recommendation 19, for its definition of sexual harassment and instructions on measures that states should take to combat the practice.⁷⁴

To address the rights violations highlighted by the PIL petition, the Court issued directives specifying mandatory guidelines to combat sexual harassment in the workplace.⁷⁵ The *Vishaka* judgment specified that the guidelines would be "binding and enforceable . . . until suitable legislation is enacted to occupy the field."⁷⁶

C. Response

The *Vishaka* case exemplifies the dynamics of judicial activism through PIL. Critics have expressed concern that the Court "stepped outside its bounds" and into the "domain of Parliament" by enacting anti-sexual harassment guidelines that function as law.⁷⁷ Presenting another viewpoint, however, an advocate noted: "Parliament abdicated its responsibility by not taking action on a relevant and very much identifiable problem, and the Court then actually had to step in to plug the gap, otherwise there may not have been a solution to the problem at all."⁷⁸ According to Justice Verma, the other branches of government seem to have "indirectly accepted" the *Vishaka* Court's guidelines, because the executive branch has been implementing them and Parliament has not yet replaced them with legislation.⁷⁹

On March 3, 2006, the Rajya Sabha, the upper house of the Indian Parliament, responded to the *Vishaka* judgment by introducing the Working Women (Prevention of Sexual Harassment at Workplaces) [*150] Bill, which credits the Court for having "taken up this issue very seriously."⁸⁰ This Bill reveals how judicial response to rights violations through PIL can spur the legislative branch into action. Although the Bill is still pending, Kapur and Justice Verma both said they are not bothered by the legislative delay because of the strong remedies secured by the Court's guidelines.⁸¹ Kapur expressed frustration with the delays of litigation -- the *Vishaka* decision was issued five years after the

⁷¹ *Vishaka*, (1997) Supp. 3 S.C.R. 404, para. 2.

⁷² *Id.* para. 3.

⁷³ *Id.* para. 5.

⁷⁴ *Id.* paras. 12-13 (citing CEDAW arts. 11, 24; CEDAW Gen. Rec. 19, paras. 17, 18, 24(j)).

⁷⁵ *Id.* para. 16.

⁷⁶ *Id.*

⁷⁷ Interview with Rohit De, *supra* note 22; Interview with Justice B.N. Srikrishna, *supra* note 50; Interview with Rohan Thawani, *supra* note 15.

⁷⁸ E-mail from Rohan Thawani, *supra* note 24.

⁷⁹ Interview with Justice J.S. Verma, *supra* note 54.

⁸⁰ Working Women (Prevention of Sexual Harassment at Workplaces) Bill, No. 8 of 2006 (introduced Mar. 3, 2006), available at http://rajyasabha.nic.in/bills-ls-rs/2006/VIII_2006.PDF.

⁸¹ Interview with Justice J.S. Verma, *supra* note 54; Interview with Naina Kapur, *supra* note 64.

PIL petition was filed -- but she credited the judiciary with creating a big change and working "faster than Parliament at least."⁸²

The *Vishaka* ruling has had a broad impact by increasing awareness of and accountability for sexual harassment in Indian workplaces.⁸³ A Mumbai High Court judge noted: "Public organizations have laid down rules against sexual harassment and once there are rules . . . [t]hings become more structured, more transparent. More women are willing to come out in the open now because there is an available forum for discussing these issues."⁸⁴ Additionally, the *Vishaka* decision has promoted greater enforcement of women's rights and broader application of international law at the state high court level.⁸⁵ The case has been described as "path breaking," "one of the most powerful legacies" of PIL, and a "trendsetter" that "created a revolution."⁸⁶

Implementation of the Court's judgment has not been without significant challenges. A 2008 study conducted in West Bengal workplaces highlighted numerous weaknesses in the functioning of sexual harassment committees.⁸⁷ Moreover, a PIL action calling for better [*151] enforcement of the *Vishaka* guidelines was initiated several years ago, to which the Court has responded with various interim orders attempting to address the shortcomings.⁸⁸ The Court also had occasion to reinforce the *Vishaka* guidelines in a 1999 appeal filed by a female secretary who alleged that her employer had made repeated attempts to sexually accost her.⁸⁹ This case demonstrates how a PIL action that judicially recognizes women's rights can pave the way for the enforcement of those rights through litigation at an individual level.

The PIL ruling that empowered working women to assert their rights and paved the way for the use of international law in domestic courts also had a poignant impact on the individual who inspired it. Kapur described Bhanwari Devi's reaction to the *Vishaka* ruling as follows:

After the judgment came, I took it back to Bhanwari and explained it. She was over the moon. We were lying on two sides of a haystack and she was in a state of joy that her whole experience had helped create something for other women. . . . That it created change for somebody else was important to her.⁹⁰

The *Vishaka* case thus fulfilled the vision of the Supreme Court justices who developed the PIL mechanism so that the judiciary, the government, and public-spirited petitioners could work together to redress rights violations suffered by disempowered segments of the population.

V. LIMITATIONS OF PIL

⁸² Interview with Naina Kapur, *supra* note 64.

⁸³ See, e.g., Interview with Dr. Usha Ramanathan, Researcher on Jurisprudence of Law, Poverty, and Rights, in New Delhi, India (Aug. 29, 2006) (noting that the judgment has made a large impact in universities and large workplaces because "before *Vishaka*, there was nothing" to empower women in this regard).

⁸⁴ Interview with Justice D.Y. Chandrachud, *supra* note 15.

⁸⁵ *Id.*; Interview with Dr. Asha Bajpai, Reader, Tata Inst. of Social Sciences, in Mumbai, India (Mar. 29, 2006).

⁸⁶ Interview with Justice D.Y. Chandrachud, *supra* note 15; Interview with Dr. Asha Bajpai, *supra* note 85; Interview with Akhila Sivasdas, Director, Ctr. for Advocacy & Research, in New Delhi, India (Mar. 14, 2006).

⁸⁷ Paramita Chaudhuri, *Sexual Harassment at the Workplace: Experiences with Complaints Committees*, ECON. & POL. WKLY., Apr. 26, 2008, at 99, available at <http://www.epw.org.in/epw/uploads/articles/12191.pdf>.

⁸⁸ *Medha Kotwal Lele v. Union of India*, W.P. (CrI.) Nos. 173-177/1999, Item No. 36 (Apr. 26, 2004); W.P. (CrI.) Nos. 173-177/1999, Item No. 104 (Jan. 17, 2006) (India).

⁸⁹ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 S.C.R. 117.

⁹⁰ Interview with Naina Kapur, *supra* note 64.

Despite PIL's potential for promoting gender justice, as illustrated by the *Vishaka* case study, petitioners who use this process must confront certain limitations.⁹¹ Delays inherent in pursuing justice through the courts are a major disincentive for rights advocates, and petitioners have even sought to withdraw PIL actions for this [*152] reason.⁹² Another key weakness is that the Court's authority to issue orders through the PIL vehicle far exceeds its ability to enforce them.⁹³ To address noncompliance among PIL respondents, the judiciary's primary weapon is to hold violators in contempt of court.⁹⁴ However, this power can be difficult to execute and "gets stunted with overuse."⁹⁵

Nonetheless, even when the Court's orders are not fully enforced, PIL actions can add value by generating public awareness, mobilizing discourse, galvanizing activists, and paving the way for litigation in lower courts.⁹⁶ A local development expert noted that once there is a "Supreme Court stamp" in favor of a particular issue, advocates "get a certain upper hand and can go ahead with the changes very vigorously, . . . so it becomes a right."⁹⁷ The *Vishaka* judgment illustrates this point: "It is obviously not implemented absolutely, but just the fact that everybody knows about it, that it is there . . . makes the difference," observed one lawyer.⁹⁸

Another factor that limits the potential for promoting gender justice through PIL is the increasing resistance that the mechanism is encountering from the public, the judiciary, and the other branches of government due to abuse and overuse. "The courts opened their doors so wide that they find it difficult to control the influx today," observed one Supreme Court Justice.⁹⁹ Moreover, judges and members of the [*153] public are now derisively referring to certain PIL actions as "private," "publicity," or "politically" interested litigation, due to the large number of disingenuous actions that are filed.¹⁰⁰ Critics further contend that the nature of PIL has changed drastically since the early 1990s: "the common man's constituency seems to have shrunk" and the mechanism is increasingly being used to protect the rights of the "propertied middle class."¹⁰¹ Thus, some regard PIL as no longer having the "radical edge" it once had.¹⁰²

Given this backlash, there are risks inherent in bringing a PIL action directly in the highest court of the country and receiving an unfavorable, binding judgment -- particularly when there is not enough public support or positive

⁹¹ See, e.g., Marc Galanter & Jayanth K. Krishnan, "Bread for the Poor": Access to Justice and the Rights of the Needy in India, [55 HASTINGS L.J. 789, 797 \(2004\)](#) (pointing out the following drawbacks of the PIL process: "an inability to resolve disputed questions of fact; weakness in delivering concrete remedies and monitoring performance; reliance on generalist volunteers with no organizational staying power; and dissociation from the organizations and priorities of the disadvantaged").

⁹² Interview with Naina Kapur, *supra* note 64; see *Sheela Barse v. Union of India*, (1988) Supp. 2 S.C.R. 643; P.D. MATHEW, PUBLIC INTEREST LITIGATION 44 (2005); Jayanth Krishnan, *Social Policy Advocacy and the Role of the Courts in India*, 21 AM. ASIAN REV. 91, 92 (2003); Susman, *supra* note 10, at 98.

⁹³ See EPP, *supra* note 12, at 88; Galanter & Krishnan, *supra* note 91, at 797; Confidential Interview with Two Judges, High Court of Bombay, in Mumbai, India (Mar. 16, 2006) [hereinafter Interview with Mumbai Judges]; Interview with Fali Nariman, *supra* note 4; Interview with Justice Leila Seth, *supra* note 15; Interview with Rohan Thawani, *supra* note 15.

⁹⁴ Srikrishna, *supra* note 23, at 18; see INDIA CONST. art. 142, § 2;

⁹⁵ KISHWAR, *supra* note 42, at 41, 48; see Interview with Mumbai Judges, *supra* note 93; Interview with Justice Leila Seth, *supra* note 15; Interview with Rohan Thawani, *supra* note 15.

⁹⁶ See, e.g., KISHWAR *supra* note 42, at 41 (noting that despite Court's disappointing response to PIL case challenging discriminatory tribal property succession law, "within a short time, we had succeeded in getting the issue of women's land rights debated and discussed among a whole range of social and political organizations"); see also Interview with Justice D.Y. Chandrachud, *supra* note 15; Interview with Fellow, National Judicial Academy, in Bhopal, India (Mar. 30, 2006); Interview with Justice Leila Seth, *supra* note 15; Interview with Rohan Thawani, *supra* note 15.

⁹⁷ Interview with Development Expert, *supra* note 19.

⁹⁸ Interview with Vishnu Shankar, Judicial Law Clerk, Supreme Court of India, in New Delhi, India (Mar. 8, 2006).

⁹⁹ Srikrishna, *supra* note 23, at 19.

¹⁰⁰ MATHEW, *supra* note 92, at 41, 44; Susman, *supra* note 10, at 82; Interview with Justice M.J. Rao, *supra* note 15; Interview with Justice B.N. Srikrishna, *supra* note 50.

¹⁰¹ Discussion at Law & Life in South Asia Conference, Yale University, New Haven, Conn., U.S. (May 12, 2006); see Interview with Law Clerk, *supra* note 26; Interview with Senior Official, National Human Rights Commission, in New Delhi, India (Mar. 28, 2006).

¹⁰² Discussion at Law & Life in South Asia Conference, *supra* note 101.

high court precedent on the issue. In some cases, initiating PIL actions in one or more of the twenty-one state-level high courts of India instead might be more advantageous.¹⁰³ The high courts are likely to have a better sense of on-the-ground realities, and offer the logistical conveniences of litigating locally and implementing targeted remedies on a state-by-state basis.¹⁰⁴ The present Article and much of the other scholarship on the Indian legal system has focused on the Supreme Court, but this represents only a small fraction of legal activity in the country. Future research on lower courts will be critical for a more comprehensive understanding of the Indian judiciary's role in promoting gender justice.

VI. CONCLUSION

Through the enterprising PIL vehicle, the Indian Supreme Court has broadly addressed women's rights abuses and spurred the other branches of government into action. As one high court judge remarked, "PILs are like alarm clocks. They tell the government: don't sleep, please get up."¹⁰⁵ However, judicial directives that trespass too deeply into the realms of the legislature and the executive can ultimately undermine the Court's powers, especially when its orders cannot [*154] be effectively implemented. The judiciary must also be vigilant about not conforming to discriminatory gender norms that can have a limiting effect on the fulfillment of women's rights through PIL.

The Court could avoid these problematic tendencies by maintaining a focused loyalty to the Constitution -- which provides a strong legal basis for advancing gender equality through the PIL process and clearly delineates the roles of each branch of government. As asserted by a legislator in the December 2007 Lok Sabha debates, "Parliament is accountable to the people, Government is accountable to Parliament, what is the accountability of the Bench? . . . I answer with humility that the Judiciary is accountable to the Constitution."¹⁰⁶

Justice Verma, who authored the landmark *Vishaka* decision, observed that through PIL, "innovative measures have been taken, . . . [t]he paths have been laid, and there is a need to continue walking on them, and to walk properly."¹⁰⁷ Strategic use of PIL to confront women's rights violations in a constitutionally sustainable manner can secure these paths toward achieving widespread and enduring gender justice in India. In a speech commemorating India's sixtieth anniversary of independence in 2007, Prime Minister Singh recalled a quote from Pandit Jawaharlal Nehru: "[L]aws and constitutions do not by themselves make a country great. It is the enthusiasm, energy and constant effort of a people that make it a great nation."¹⁰⁸ The PIL mechanism is a reflection of this aspiration. If leveraged correctly, it can help the Indian judicial system exercise national and global leadership in promoting the rights of women.

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¹⁰³ See INDIA CONST. art. 226.

¹⁰⁴ Interview with Justice D.Y. Chandrachud, *supra* note 15; Interview with Mumbai Judges, *supra* note 93; Interview with Shruti Pandey, Director, Women's Justice Initiative, Human Rights Law Network, in New York, N.Y. (June 8, 2006); see Susman, *supra* note 10, at 92.

¹⁰⁵ Interview with Justice Y. Singh, *supra* note 18.

¹⁰⁶ Lok Sabha Debates of Dec. 3, *supra* note 16 (statement of Shri Gurudas Dasgupta).

¹⁰⁷ Interview with Justice J.S. Verma, *supra* note 54.

¹⁰⁸ Manmohan Singh, Prime Minister of India, Prime Minister's Speech on Independence Day 2007 (Aug. 15, 2007), available at <http://pmindia.nic.in/speech/content.asp?id=570>.