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PUBLIC INTEREST LITIGATION

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I INTRODUCTION

IT IS now well established that public interest litigation (PIL) is a remedial jurisprudence, where the court transcends the traditional judicial function of adjudication in its endeavour to protect fundamental rights of the disadvantaged sections of society lacking access to courts or to vindicate diffuse rights. Such remedial nature of PIL, as exemplified by the first PIL of *Hussainara Khatoon* v. *State of Bihar*,[1] renders this kind of litigation to be collaborative and non-adversarial in character and lacking the traditional *lis*. From such remedial nature also flow the other characteristics of PIL such as the typical sprawling and amorphous structure of the parties to the litigation, the active and inquisitorial role of the court, the grant of immediate and *interim* remedial relief once a *prima facie* case is made out.[2]

The current year witnessed several PIL actions highlighting various aspects of the remedial nature of PIL. The Supreme Court played a pro-active role in laying down guidelines on important matters, notably in PILs pertaining to protection of children in school buildings in case of fire and fixation of accountability and liability for large scale destruction of public and private property in the name of agitations. It is equally well settled that PIL cannot provide an avenue for substituted governance nor can the court, in a democratic set up governed by separation of powers, assume the task of governance which the Constitution leaves to the elected representatives or to expert bodies who are accountable to the collective wisdom of the

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1 AIR 1979 SC 1360. This case, known as the *Undertrial Prisoners* case, pertained to the illegal detention of thousands of prisoners in jail awaiting trial for periods substantially longer than the period they would have served in jail had they been tried, convicted and given maximum sentence. The Supreme Court, while releasing over 40,000 prisoners on personal or no bond, read a "right to speedy trial" as being implicit in the fundamental right to life and liberty guaranteed in article 21 of the Constitution.

2 For detailed discussion on the evolution, development, nature and norms of PIL, see Aman Hingorani, *Indian Public Interest Litigation: Locating Justice in State Law*, XVII *DLR* 159 (1995); C.D. Cunningham, *Public Interest Litigation in the Indian Supreme Court: A Study in light of the American Experience*, 29 *JILI* 494 (1987); Parmanand Singh, "*Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation"*, in MP Singh (ed.) *Human Rights and Basic Needs* (2008).

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legislature. In the year 2009, the Supreme Court as also the High Courts declined to interfere in many PIL cases pertaining to policy matters and political issues. Further, the very innovations that provide the impoverished access to the court also open the doors of the court for unscrupulous litigants filing PIL actions for personal gain or motive, or simply for publicity. It is, therefore, not surprising that attempts have been made to misuse PIL, even in the year under survey.

II NATURE OF PIL

In *Ramji Singh* v. *State of Orissa,*[3] the grievance before the Orissa High Court was that the development authority had earlier earmarked certain area of land for a hospital, post office and *sulabh sauchalaya* but in the said land, a commercial complex had been constructed and shops allotted to private persons. While dismissing the PIL for want of proper pleadings, the High Court observed that PIL is meant for enforcement of basic human rights of the weaker sections of community who are poor, downtrodden, ignorant and illiterate and whose fundamental rights and statutory rights have been violated. There must be a public injury and public wrong caused by wrongful or *ultra vires* acts or omission of the state or a public authority. PIL is meant to compel the executive to carry out its constitutional and legal obligations and is not in the nature of adversary litigation. The court should take cognizance in PIL when there are complaints that shock the judicial conscience. Since PIL is *pro bono publico*, it should not smack of any ulterior motive. No person has a right to achieve any ulterior purpose through such litigation or file frivolous litigation for vested interests.

In *Annapoorneshwari Yuvakara Sangha* v. *Bangalore Development Authority,*[4] the Karnataka High Court emphasized that the interest of the petitioner in a PIL matter is subordinate to the interests of the larger group of citizens involved so as to preclude the petitioner from simply withdrawing the PIL. This PIL was initiated for stopping construction of a commercial complex in a residential area as the same was in violation of the master plan. The High Court did not permit the petitioner to withdraw the PIL, holding that once a person has chosen to set law in motion and to represent an entire section of society on account of deprivation of legal rights by authorities, its withdrawal cannot be allowed. The High Court directed the corporation to take action against the builder for violating the sanctioned plan as per the Karnataka Town and Country Planning Act, 1963.

III *SUO MOTU* PIL

Noting the absence of any specific law or directions governing large scale destruction of public and private property in the name of agitations,

3 AIR 2009 (NOC) 1047 (Ori).
4 AIR 2009 (NOC) 1512 (Karn).

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bandhs, *hartal* and the like, the Supreme Court took *suo motu* notice of the matter in *Destruction of Public & Private Properties* v. *State of AP*.[5] Accepting the recommendations of the two committees set up by it, the court issued following guidelines for preventive action and for giving teeth to any investigation/inquiry. These guidelines, which are to cease to be in operation as and when appropriate legislation consistent with the guidelines are put in place and/or any fast track mechanism is created by statute, require that as soon as any demonstration is organized: (i) the organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest; (ii) all weapons, including knives, *lathis* and the like shall be prohibited; (iii) an undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant juncture; (iv) the police and state government shall ensure videograph of such protests to the maximum extent possible; (v) the person in-charge of supervision of the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer in the state (where the situation stretches beyond one district); (vi) in the event the demonstration turns violent, the officer-in-charge shall ensure that the events are videographed through private operators and also request further information from the media and others on the incidents in question; (vii) the police shall immediately inform the state government with reports on the events, including damage, if any, caused and (viii) the state government shall prepare a report based on the police reports and other information that may be available to it, and shall file a petition, including its report, in the High Court or the Supreme Court, as the case may be, for the court in question to take *suo motu* action.

The guidelines pertain to assessment of damages where a mass destruction to property has taken place due to protests. As per these guidelines, the High Court may take *suo motu* action and set up machinery to investigate the damage caused and to award compensation thereto on the principle of absolute liability. Where more than one state is involved, action could be taken by the Supreme Court. It is open to the concerned court to appoint a sitting or retired High Court judge or district judge as the claims commissioner to estimate the damages and to investigate the liability. An assessor may be appointed to assist claims commissioner. The claims commissioner and the assessor could seek instructions from the Supreme Court or the High Court, as the case may be, to summon video or other recordings from private and public sources to pinpoint the damage and to establish the nexus with the perpetrators of the damage. Liability would then be borne by the actual perpetrators of crime as also by the organizers of the event. Exemplary damages could be awarded, though not greater than twice the amount of damages liable to be paid. Such damages were to be assessed for: damage to public property, damage to private property, damage causing

5 AIR 2009 SC 2266.

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injury/death to a person, cost of action taken by the authorities and police to take preventive and other actions. The claims commissioner would submit a report to the Supreme Court or the High Court, as the case may be, which would finally determine the liability after hearing the concerned party. The Supreme Court, however, declined to issue positive directions to the media in such matters, holding that appropriate methods should be devised for self-regulation rather than external regulation for the industry.

In *Nirmal Singh Kahlon* v. *State of Punjab,*[6] the issue arose before the Supreme Court as to whether the Punjab & Haryana High Court could, while entertaining a writ petition relating to the recruitment of *panchayat* secretaries under the Punjab Panchayati Raj Act, 1994, refer the question of a systematic commission of fraud to the central bureau of investigation (CBI) for investigation, notwithstanding a chargesheet having been filed against the accused under various provisions of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988 pursuant to filing of an FIR by the state's vigilance department upon investigation. The Supreme Court took the view that when the High Court directed a thorough probe into the selections made, the "nature of litigation" was changed from "private interest litigation to public interest litigation' since the High Court while entertaining the writ petition formed a *prima facie* opinion as regards the systematic commission of fraud. The court observed:[7]

> The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversorial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time.

The Supreme Court also took the view that the second FIR now lodged by the CBI upon further investigation was maintainable inasmuch as "it depicts a crime committed in course of selection process of Panchayat Secretaries involving a large number of officers," whereas the first FIR merely "contained the misdeeds of individuals". Holding that the reference made to the CBI by the High Court in exercise of its power under article 226 of the Constitution of India in a public interest litigation would be valid, the Supreme Court pointed out that the High Court was not concerned with individual acts but with a scam involving appointment of *panchayat* secretaries having wide ramifications for the state.

In *A. Abdul Farook* v. *Municipal Council, Perambalur,*[8] the secretary of the district consumer council filed a PIL before the High Court seeking

6 AIR 2009 SC 984.
7 *Id.* at 993.
8 (2009) 11 SCR 727.

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the issuance of a writ of *mandamus* forbearing the government of Karnataka and the local municipal corporation from putting up permanent arches on the highway. The High Court dismissed the PIL, while directing the state government to allow the arches to be put up. On appeal, the Supreme Court held that the power to grant permission for erecting the arches or any other construction lay with the highway authority and that the state, being the principal protector of the rights of its citizens, should not have granted such permission in view of the doctrine of public trust. On the maintainability of the PIL at the instance of the secretary of the district consumer council, the Supreme Court relied upon *Nirmal Singh Kahlon* v. *State of Punjab*[9] to hold that:

> [I]n a public interest litigation of this nature, it is not necessary for the Court to abide by the strict rules of pleadings and even if it s found that the petitioners are busy bodies, the courts while discharging them, could proceed to deal with the public interest litigation *suo moto.*

IV RELAXATION OF *LOCUS STANDI*

In *Palanpur Bar Association* v. *High Court of Gujarat,*[10] the Gujarat High Court upheld the *locus standi* of the bar association to file a PIL challenging the establishment of the court of joint district judge and additional sessions judge at a particular place. The High Court observed that since lawyers are both "officers of the Court" and "persons having fiduciary relationship with consumers of justice," they may ventilate their grievances in relation to the establishment of courts and conferment or curtailment of the powers of the court.

In *J & K National Panthers Party* v. *Union of India,*[11] the Jammu and Kashmir High Court upheld the *locus standi* of a political party to file a PIL challenging a constitutional amendment to the Constitution of Jammu and Kashmir as adversely affecting democratic principles and violating the basic structure of the Constitution. The court held that a political party, which is a political organization, registered with the election commission, by reason of being so registered, is required to be an association of public spirited and policy oriented activists. A PIL filed by such political party, which is a part of democracy enshrined in the Constitution, to uphold democracy by questioning the constitutional amendment which, according to the political party, affects such democracy, is maintainable. The political party cannot be described as a busybody or meddlesome interloper which had approached the court under the guise of PIL.

9 *Supra* note 6.
10 AIR 2010 (NOC) 346 (Guj).
11 AIR 2010 J&K 47.

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In *Association of Residents of Mhow* v. *Union of India,*[12] the Madhya Pradesh High Court upheld the *locus standi* of the association of residents of Mhow to file a PIL challenging the notice issued by the Union of India for resumption of land and bungalows in the area under their occupation. The High Court took the view that if a suit can be instituted as representative action under order 1, rule 8, Code of Civil Procedure, 1908 on behalf of numerous persons having the same interest with a view to avoid multiplicity of litigation, a writ petition can also be filed under article 226 of the Constitution as a representative action on behalf of numerous persons having the same interest against the state and public authorities and such a writ petition would be categorized as PIL. The High Court observed that though the office bearers and some members of the association may be pursuing their own litigation against the authorities, other members of the association also have similar grievances which are sought to be redressed through the PIL. This is, therefore, not a case where individuals have filed the PIL to enforce their own personal interest only but is a PIL filed by a community residing in Mhow cantonment through their association for redressal of their common grievance.

In *Inder Puri Welfare Association* v. *Union of India,*[13] the Delhi High Court entertained the PIL filed by the welfare association seeking a direction to the Delhi Development Authority (DDA) to remove the illegal encroachment allegedly made by a retired SDM of Delhi government over an area of two acres of land belonging to the DDA. As per the DDA, the SDM was not entitled to lease the land. The High Court directed the DDA to take action against the SDM as per law and also granted liberty to the SDM to take recourse to all remedies available in law, including challenging the findings of the DDA as to his non-entitlement.

V THE RIGHT TO LIFE

In *University of Kerala* v. *Council of Principals of College in* Kerala,[14] the Supreme Court held that ragging is the worst form of human rights abuse and results in the intentional and reckless damage to a person's right to live with human dignity. Defining the practice of ragging to be a form of systematic and sustained physical, mental and sexual abuse of fresh students at the college/university/any other educational institution at the hands of senior students of the same institution and sometimes even by outsiders, the Supreme Court noted that serious abuses of human rights take place generally in medical and engineering colleges and the armed forces. Recalling the series of guidelines to the educational institutions (whether central, state or private institutes) laid down in *Vishva Jagriti Mission* v. *Central* Government,[15] the Supreme Court directed that the government in

12 AIR 2010 MP 40.
13 165 (2009) DLT 639.
14 AIR 2009 SC 2223.
15 2001 (3) SCR 540.

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the states and the union territories and the university act in terms of the guidelines. The court directed the MCI and the BCI to frame the requisite regulations in consultation with UGC, which shall be binding on the institutions. These regulations were to be intimated to the students at the time of admission by incorporating appropriate provision in the prospectus issued for admission, along with the consequences which would flow from not observing the guidelines. On the issue as to whether an opportunity should be given to an offender before taking action, the Supreme Court held this would, in many cases, frustrate the need for taking urgent action. In such cases, if the authorities are *prima facie* satisfied about the errant act of any student, they can, in appropriate cases, pending final decision, suspend the student from the institution and the hostel, if any, and give an opportunity to him to have his say. The police is to be informed immediately and the criminal law set into motion. If it comes to the notice of the university or controlling body that any educational institution is trying to shield the errant students, they shall be free to reduce the grants-in-aid, and in serious cases deny grants-in-aid.

In *Manoj Rajani* v. *State of M.P.,*[16] the issue before the Madhya Pradesh High Court in a PIL filed by the residents of Dewas town was whether the municipal corporation of Dewas could be directed to procure sufficient quantity of water on a regular basis for public and private purposes in Dewas town to discharge its constitutional obligation under article 21 of the Constitution and statutory obligations under the M.P. Municipal Corporation Act, 1956. It was not in dispute that the river Dewas dries up by the end of December every year and, as a result, the Dewas town faces acute shortage of water till the next rainy season. Allowing the PIL, the High Court held that the right to life guaranteed under article 21 of the Constitution includes right to enjoyment of pollution-free water and air for full enjoyment of life. Moreover, the statutory provisions required the municipal corporation to provide sufficient supply of suitable water and empowered it to purchase water. The High Court directed the municipal corporation to procure sufficient quantity of water for the town on a regular basis through railways or motor vehicle tankers.

VI RIGHT TO PERSONAL LIBERTY

In a case reminiscent of the infamous *Rudul Sah* v. *State of Bihar,*[17] the

16 AIR 2009 MP 229.

17 1983 (3) SCR 508. Though the question of compensation under article 32 of the Constitution arose first in *Anil Yadav* v. *State of Bihar,* AIR 1982 SC 1008, known as the *Bhagalpur Blindings* case), it was in *Rudul Sah* case that compensation was actually awarded by the Supreme Court for the first time in exercise of its writ jurisdiction. *Rudul Sah* was arrested in 1953 on the charge of murder of his wife and acquitted by the sessions judge in 1968, to be released on further orders. These orders did not come until 14 years after his acquittal. By the time *Rudul Sah* was released in 1982, he had spent 29 years in prison for a crime he had not committed.

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Madhya Pradesh High Court acted on a letter from one Pooran Singh seeking compensation for his illegal detention in jail for almost five years after he had completed his sentence. In this shocking case, *Pooran Singh* v. *State of Madhya Pradesh,*[18] the High Court recorded that it had, on its appellate side, reduced the sentence awarded to the petitioner under the NDPS Act, 1985 by the special court, Narsinghpur from ten years RI with fine of Rs one lakh to three years and five months with fine of Rs. 500. However, the Special Court, Narsinghpur simply did not issue the modified warrant for his release on completion of the modified sentence. Consequently, the petitioner was kept in detention for almost five years after completion of his modified sentence. Interestingly, the High Court relied on the decision of the Privy Council in *Maharaj* v. *Attorney General of Trinidad and Tobago,*[19] where an argument had been raised that a judge cannot be made personally liable for anything done or purported to be done in the exercise or purported exercise of his judicial functions. Lord Diplock had rejected the argument by holding that the claim for redress for what has been done by the judge is a claim against the state for what has been done in the exercise of judicial power of the state. This is not a vicarious liability. Indeed it is the liability of the state itself. It is not a liability in tort at all; it is the liability of the state, not of the judge.

The High Court reiterated that the liability of the state to pay compensation for deprivation of the fundamental right to life and personal liberty is a new liability in public law created by the Constitution and not vicarious liability or a liability in tort. For this reason, this new liability is not hedged by limitations, including the doctrine of sovereign immunity, which ordinarily applies to the state's liability in tort. After analyzing the law laid down by the Supreme Court in *Rudul Sah* v. *State of Bihar,*[20] *Nilabati Behara* v. *State of Orissa*[21] and *D K Basu* v. *State of West Bengal,*[22] the High Court came to the conclusion that the defence of sovereign immunity[23] is not available when the state or its officers, acting in the course of employment, infringe upon a person's fundamental right to life and personal liberty as guaranteed by article 21 of the Constitution and that the state can be directed in a writ jurisdiction under articles 32 and 226 of the Constitution to repair the damage done to the victim by paying appropriate compensation. With a view to "apply balm to the wounds of the petitioner and not to punish the transgressor", the High Court awarded

18 AIR 2009 MP 153.
19 (1978) 2 All ER 670.
20 *Supra* note 17.
21 (1993) 2 SCC 746.
22 (1997) 1 SCC 416.
23 It is ironical that the state in India still relies on the English maxim "King can do no wrong" to claim sovereign immunity in tort, when such concept stood abolished in the U.K way back in 1947 by the Crown Proceedings Act, 1947. For a critique on the doctrine of sovereign immunity in India, see Aman Hingorani, *State Liability in Tort - Need for a Fresh Look* (1994) 2 SCC (*Jour)* 7.

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compensation of Rs. three lakhs to the petitioner. The High Court gave liberty to the petitioner to resort to traditional remedies and directed that the compensation awarded in the writ proceedings would be adjusted against any amount awarded to him by way of damages in civil suit.

VII RIGHT TO EDUCATION

In *Avinash Mehrotra* v. *Union of India*,[24] the PIL sought the framing of rules by the Supreme Court for safe education of children and to strengthen laws to protect children in school buildings in case of fire and other hazards so as to protect the right of life guaranteed to all school going children under articles 21 and 21A of the Constitution. The PIL referred to an unfortunate fire accident in a privately run school, where a fire started in the school's kitchen while the cooks were preparing a meal under the mid–day meal scheme. The school building housed more than 900 students in a crowded, thatched roof building with a single entrance, a narrow staircase, windowless classrooms and only one entrance and exit. The ventilation of the entire school was extremely poor with only cement-perforated windows. The kitchen fire rose so high that the thatched roof of the classrooms caught fire and the blazing roof supported by bamboo poles collapsed on the school children and most of them died on the spot. The school's narrow, steep stairs and few exits hampered efforts of nearby residents in dousing the flames and trying to rescue the children. Stating the frequent occurrences of such incidents, the PIL alleged flagrant violation of school safety regulations in the entire country. The Supreme Court held that the right to education attaches to the individual as an inalienable human right, the scope of which mandates the state to provide education to children in all places, even in prisons. The right to education requires that the child study in a quality school which should pose no threat to the his/her safety. It flows from articles 21 and 21A of the Constitution that the school children must receive education in safe schools. Declaring that it is the fundamental right of each and every child to receive education free from fear for personal security and safety, the Supreme Court directed all government and private schools to comply with the national building code, 2005 and the code of practice of fire safety in educational institutions of the bureau of Indian standards. The court further directed that: (i) before granting recognition or affiliation, the state governments and union territories concerned are to ensure that the buildings are safe and secure from every angle and that they are constructed according to safety norms incorporated in the national building code of India; (ii) all existing government and private schools shall install fire extinguishing equipment within a period of six months; (iii) the school buildings be kept free from

24 (2009) 6 SCC 398.

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inflammable and toxic material. If storage is inevitable, such material should be stored safely; (iv) evaluation of structural aspect of the school must be carried out periodically. The engineers and officials concerned must strictly follow the national building code, 2005. The safety certificate shall be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the official concerned and (v) necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipment.

In *Sudiep Shrivastava* v. *State of Chhattisgarh,*[25] the Chhattisgarh High Court considered in light of article 21A of the Constitution, the PIL filed by an advocate, a journalist and social activist followed by a writ petition by individual students challenging the decision of the Chhattisgarh institute of medical sciences (CIMS) and Guru Ghasidas University (the University) to charge nominal fees for "free seats" and substantial fees for "paid seats" of the MBBS degree course at CIMS. Finding on facts that the CIMS is a part of the university, though aided by the state government, the High Court held the scheme of subsidizing "free seats" from the fee collected from "paid seats" formulated by the Supreme Court in *Unnikrishnan* v. *State of Andhra Pradesh*[26] to be inapplicable to CIMS. Since CIMS was not a private institution, it would also not be covered by the fee fixed for private institutions by the committee set up in *Islamic Academy of Education* v. *State of Karnataka*[27]. The decision of the university and CIMS to charge higher fees per *annum* per student admitted to the MBBS course at CIMS against "payment seats" with a view to subsidize the cost of medical education of students admitted to "free seats" was, therefore, held by the High Court to be discriminatory, unreasonable and unfair, thereby violating article 14 of the Constitution.

The High Court further held that since the fundamental right to education under article 21A of the Constitution is guaranteed only up to the age of 14 years, the state cannot be directed to provide funds to aided medical colleges to meet recurring expenditure on salary and allowance of teaching and non-teaching staff and other expenses so as to facilitate the fixing of nominal fees for the MBBS course. Noting that that the university had the statutory power to fix fees, the court held that it was open to the university to charge higher fee for a MBBS seat than that fixed for government colleges. In the circumstances, the High Court allowed the PIL by quashing the differential fees prescribed, while directing the university and CIMS to draw up a fresh scheme in regard to fee fixation.

25 AIR 2009 Chh. 31.
26 (1993) 1 SCC 645.
27 (2003) 6 SCC 697.

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VIII FREEDOM OF CHOICE AND EXPRESSION OF VOTERS

In *P.K. Sekar Babu* v. *State Election Commission, Chennai,*[28] the petitioner, an MLA in the Tamil Nadu Assembly, filed the PIL in the Madras High Court on an apprehension that free and fair elections will not be held in two wards of the corporation of Chennai, in view of the breach of specific assurances given by the state in earlier writ petition to conduct the previous elections in a free and fair manner. Relying on *DAV College, Bhatinda* v. *State of Punjab*,[29] the High Court held that it was open to a person to move the court when there was threat to his fundamental right and he need not wait till that threat was translated into actual practice. The High Court emphasized the importance of a free and fair election in a democracy and held that a voter's right to cast his vote amounts to his freedom of choice and expression in favour of a candidate whom he wants to elect, thereby partaking the character of a fundamental right under article 19(1)(a) of the Constitution. However, in the absence of any particulars from which it appears that an attempt was being made by any interested quarter for vitiating the election atmosphere, the High Court merely directed the state election commission to strictly follow its assurance given to the petitioner that all arrangements had been made to ensure free and fair elections. The state was directed to step up its vigil in respect of the territorial limits of the wards in order to ensure that persons with questionable criminal records or background were not allowed free entry in those areas to overpower or intimidate the voters. Further directions were issued to ensure that only voters carrying voter identity cards, candidates, accredited polling agents, polling officials and police personnel could go within 200 meters of the polling booths.

IX RIGHT TO HOMOSEXUALITY

In *Naz Foundation* v. *Government of NCT of Delhi*,[30] the issue before the Delhi High Court in a PIL filed by an NGO pertained to the constitutional validity of section 377 of the Indian Penal Code, 1860 (IPC), which criminalizes homosexuality. The High Court declared section 377, IPC insofar as it criminalizes consensual sexual acts of adults in private, as being violative of articles 21, 14 and 15 of the Constitution. The High Court held that the "sphere of privacy allows persons to develop human relations without interference from the outside community or from the State" and thus the criminalization of "the person's core identity solely on account of his or her sexuality" violates the right to privacy guaranteed by article 21

28 AIR 2009 Mad 28.
29 (1971) 2 SCC 261.
30 2009 (160) DLT 277.

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of the Constitution. It further held that criminalization of homosexuality infringes article 15 of the Constitution inasmuch as the said article does not permit discrimination on the basis of "sexual orientation" only. The court also found the criminalization of homosexuality as being irrational and thus violative of equality clause contained article in 14 of the Constitution. It clarified that the provisions of section 377, IPC would continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors and that its judgment would not result in the re-opening of criminal cases involving section 377, IPC that have already attained finality.

X PIL AND ENVIRONMENT

In *Delhi Development Authority* v. *Rajendra Singh,*[31] the grievance raised in the PIL was that the massive construction on the periphery of the Yamuna river for Commonwealth games village (CGV) would affect the ecological integrity of the Yamuna riverbed, besides causing irreversible damage to the flood plain. Acting on the PIL, the Delhi High Court had directed the setting up of a committee to inquire as to whether the CGV site was situated on the Yamuna riverbed or flood plain and came to the conclusion that the CVG site was indeed on the riverbed. On appeal, the Supreme Court set aside the finding of the Delhi High Court holding that expert and autonomous bodies had already come to a finding that CVG site was neither on a riverbed nor on the flood plain of the Yamuna river. Moreover, the CGV site was adjacent to the site allotted for the Akshardham temple, for the construction of which the Supreme Court had given permission after obtaining opinion of the central water commission and an autonomous body. The Supreme Court recorded that the CGV site in question had been chosen and widely published way back in the year 2003 itself while the PIL was filed in the year 2007. The court observed that no relief should be given to persons who file PIL actions after inordinate delay without reasonable explanation and that such PILs were liable to be summarily dismissed. It held that the Delhi High Court ought not to have probed the matter at this juncture and that the DDA and other authorities were free to proceed with the work at the CGV site.

In *Dighi Koli Samaj Mumbai Rahivasi Sangh* v. *Union of India*,[32] the Bombay High Court upheld the maintainability of the PIL challenging clearance and sanction of Dighi port development project filed by a registered body seeking protection of environment and safeguarding interests of residents of Dighi village. The PIL was filed on the ground, amongst others, that such action violated the right to clean environment implicit in the fundamental right to life. The High Court held that the very

31 (2009) 12 SCR 163.
32 AIR 2009 (NOC) 2876 (Bom).

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fact that so many government departments were involved in the process of clearance or issuing NOC before the commencement of the project was itself indicative of the fact that it was a matter of some importance and was likely to affect the environment, ecology and public interest of villagers. It rejected the defence of *laches* and delay, holding that such defence could hardly be applied *stricto sensu* to a PIL, unless and until the delay in approaching the court was *mala fide* and its entertainment would imbalance equities between parties to the extent of causing injustice which the conscience of the court does not permit, or its economic effect was such that it would be more appropriate for the court to reject the petition on that ground.

With regard to allegations of failure to grant public hearing as per law inasmuch as the public hearing was conducted 100 kms away from the site in question, the High Court held that public hearing to affected persons was a mandatory requirement of the Environment Protection Rules, 1953. The court, however, took the view that though it would have been more appropriate for authorities to hear the people on the site or at best in public places of the village concerned or at a place that was not so far away from the site, in the instant case, public hearing was given and the petitioner participated in it. Thus, on facts, the court viewed the holding of the public hearing away from the site in question as a mere irregularity. It noted that expert bodies such as the Maharashtra pollution control board and experts in the ministry of environment and forests had examined various aspects of the matter. The court observed that it would not sit as an appellate authority as it had no expert means and tools to examine whether or not the views of the expert committee were correct. It disposed off the PIL directing the authorities to implement the conditions imposed by the competent authority in relation to property, water and electricity supply to the concerned villages.

XI IMPLEMENTATION OF STATUTES AND SOCIAL WELFARE SCHEMES

In *Prajwala* v. *Union of India*,[33] the Supreme Court directed the proper implementation of the scheme for preferential allotment of land or certain purposes to disabled/handicapped persons in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Entertaining the PIL seeking social justice for disabled/handicapped persons, the court directed that whenever state governments or local authorities allot land for various purposes indicated in section 43 of the said 1995 Act, preferential treatment must be given to disabled persons and land is to be given at concessional rates. The court

33 (2009) 4 SCC 798.

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directed the appointment of chief commissioner and commissioners in all states, as provided in section 62 of the Act, to address any further grievance arising out of non-implementation of the said scheme for preferential allotment of land.

In *Paljor Bhutia* v. *State of Sikkim*,[34] the Sikkim High Court entertained the PIL filed by an orthopaedically disabled and public spirited individual aggrieved by the non-implementation of the Persons with Disabilities Act, in the state of Sikkim. The court directed the state to take all necessary steps and actions for implementation of the Act in its letter and spirit as expeditiously as possible.

In *People's Union of Civil Liberties* v. *Union of India*[35] relating to malnutrition in children and pregnant women, the Supreme Court considered the revised nutritional and feeding norms as well as the financial norms of supplementary nutrition under the integrated child development services scheme. The court directed the state governments and union territories to make requisite financial allocation and to undertake necessary arrangements to implement the norms prescribed which include: (i) children in the age group of 6 months to 3 years are entitled to food supplement of 500 calories of energy and 12-15 gm of protein per child per day in the form of take home ration (THR); (ii) children between the age group of 3-6 years are entitled to food supplement of 500 calories of energy and 12-15 gm of protein per child at *Anganwadi* centres in the form of a hot cooked meal and a morning snack; (iii) severely underweight children in the age group of 6 months to 6 years are entitled to an additional 300 calories of energy and 8-10 gm of protein to be given as THR; (iv) pregnant and lactating mothers are entitled to a food supplement of 600 calories of energy and 18-20 gm of protein per beneficiary per day to be given as THR and (v) supplementary nutrition food in the form of THR shall be provided to all children in the age group of 6 months to 3 years, an additional 300 calories to severely underweight children in the age group of 3 to 6 years, pregnant and lactating mothers.

In *National Campaign Committee* v. *Union of India*,[36] the Supreme Court directed all states and union territories to implement the labour welfare legislation, namely, the Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and the Building and Other Construction Workers' Welfare Cess Act, 1996. The court suggested that the state governments and union territories that had not framed rules could take the Delhi rules as a model.

34 AIR 2010 Sikkim 1.
35 (2009) 6 SCR 812.
36 (2009) 3 SCC 269.

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XII PIL AND LEGAL AID

In *Forum of Social Justice* v. *State of Kerala*,[37] the Kerala High Court held that in the light of article 39A of the Constitution and the Legal Services Authorities Act, 1987, a voluntary organization could take assistance of the government department in the matter of providing free legal aid, but after obtaining approval of the state legal services authority.

XIII PIL AND ARBITRARY ADMINISTRATIVE ACTION

In *Sundargarh Citizen's Forum* v. *Orissa State Road Transport Corporation*,[38] the PIL challenged the lease of government property through the road transport corporation for a bus stand without advertisement for tenders in any newspaper having wide circulation. The property was alienated after having negotiation with a private person prior to issuance of a notice affixed only at certain offices. Dismissing the defence of the corporation that such alienation was on account of paucity of funds to meet financial liability, the Orissa High Court termed the action to be colourable and arbitrary exercise of power and in violation of article 14 of the Constitution. Holding that paucity of funds can not be a ground for not following the mandatory procedure of law, the court quashed the lease agreement. Interestingly, it entertained this PIL despite the dismissal of an earlier petition filed for the same relief. It held that principle of *res judicata* will not apply since PIL was not barred in furtherance of public interest.

In *B Krishna Bhat* v. *Union of India*,[39] the PIL before the Karnataka High Court sought a writ of *mandamus* directing the repair and maintenance of a damaged road which was unsafe for traveling, despite certification by the state government that it had been repaired substantially. It transpired that the central government had released huge funds to contractors in pursuance of said certification. The contention of the state was that overloaded trucks and uncontrolled traffic had again caused damage to road. Terming such defence as "unacceptable," the High Court held that the authorities could regulate traffic and design the road in such a way that it could withstand movement of heavy vehicles. It observed that road tax is levied to reimburse expenditure incurred by government in the formation and maintenance of road. Tax-payers have a right to ask for repair and maintenance of roads and highways. A duty is cast on the court to find out whether or not tax amount is actually utilized for the purpose for which it was levied. The court further held that when huge public money is spent unjustly, it can direct the CBI to conduct enquiry and take action against erring officers.

37 AIR 2010 (NOC) 327 (Ker).
38 AIR 2009 (NOC) 1690 (Ori).
39 AIR 2009 (NOC) 1342 (Karn).

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XIV PIL AND APPOINTMENT OF JUDGES

In *Shanti Bhushan* v. *Union of India*,[40] an issue arose before the Supreme Court as to whether for appointing an additional judge of a High Court as a permanent judge, the Chief Justice of India (CJI) is to consult the collegium as required at the time of initial appointment. The contention in the PIL was that while appointing any additional judge as permanent judge, the opinion of the CJI was required to be formed after taking into account the collective views of his senior colleagues, and no appointment could be made unless it was in conformity with the final opinion of the CJI formed in the prescribed manner. The Supreme Court disposed off the PIL holding that the rigorous exercise undertaken at the time of initial appointment of the additional judge of the High Court was not required to be redone at the time of appointment of the additional judge as permanent judge, for the reason that the rigour of scrutiny and process of selection are the same for both types of appointments. However, appointment of the additional judge as permanent judge is subject to his fitness and suitability (physical, intellectual and moral) since there is no right of automatic appointment as permanent judge or extension of appointment as additional judge.

XV POLITICAL DISPUTES NOT TO BE ENTERTAINED AS PIL

In *S N Pathak* v. *State of Bihar*,[41] a PIL was filed in the Patna High Court for issuance of writ of *quo warranto* against Union Minister, Laloo Prasad Yadav, for ousting him from the chair of the union minister, railways on account of his alleged derogatory statement that he would have crushed a roller over the chest of Varun Gandhi who had given a speech against the Muslim community. Included amongst other reliefs sought was the issuance of a writ of prohibition to prevent Yadav from making derogatory statements in public meetings. *Mandamus* was sought against the state and Yadav to ensure that he abides by the constitutional obligation cast upon him. The High Court referred to the case law to hold that while it has the power to issue the writ of *quo warranto*, such writ would not lie if a minister violates his oath of office. Maintaining a distinction between breach of oath and the absence of an oath to hold office, the court took the view that breach of office requires a termination of the tenure of office. Such power of termination can be exercised by the appointing authority under the Constitution and according to the procedure, if any, prescribed therein. The termination of that tenure is not the function of a court and, as such, proceedings under article 226 of the Constitution do not lie. The court held

40 (2009) 1 SCC 657.
41 AIR 2009 Pat. 146.

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further that impropriety of the statement of a minister is non-justiciable. As regards the writ of prohibition, the court held that such writ lies only against judicial/quasi-judicial authorities and would not lie against a person, even if he is a minister, preventing him from making speeches of a particular type or in violation of the code of elections. With regard to *mandamus*, it held that on seeing a newspaper report, one cannot immediately rush to the court seeking issuance of writ of *mandamus*. The petitioner has not approached any of the authorities before filing the writ petition for performance of a particular duty. Moreover, it has not been stated how the rights of the petitioner had been infringed by any of the respondents to issue a writ of *mandamus* against them. Observing that the court cannot be made a political battle ground and that it cannot exceed its jurisdiction for publicity sake by way of a PIL, the court held the same not to be maintainable.

Similarly, in *Raju Puzhankara* v. *Kodiyeri Balakrishnan*,[42] the Kerala High Court dismissed a PIL as non-maintainable which sought a writ of *quo warranto* against the home minister on the ground of breach of secrecy by disclosing in public that an ex-minister was sought to be prosecuted by CBI. The court held that while any citizen can approach the court seeking the writ of *quo warranto* against a minister of state for usurping his office, the said statement of home minister was not violation of oath for holding office but merely a spontaneous reaction on charges being leveled against an ex-minister. The court reiterated that *quo-warranto* cannot be issued on the ground of mere impropriety. Even otherwise, action against breach of oath is to be taken by appointing authority under Constitution. Further, breach of the secrecy is outside judicial review under article 226 of the Constitution.

In *Akhila Karnataka Police Maha Sangah* v. *B. S. Yediyurappa*,[43] the Kerala High Court declined to entertain the PIL based on breach of political promises made by the Bhartiya janata party during its election campaign of corruption free, clean governance. While 18 legislators were found to have criminal records and cases were still pending before police for investigation, the court held that the PIL was not based on statutory rights or provisions of law. It termed the dispute to be political in nature and held that the writ of *mandamus* cannot be issued requiring the CBI to enquire into state of affairs.

In *Suo Motu* v. *Chief Secretary, Govt. of Karnataka and The Chairman, Empowered Committee, Bangalore,*[44] the issue was whether power of judicial review could be exercised to look into a letter addressed to judges enclosed with a book named "Bangalore-Mysore Infrastructure Corridor Project – a case study in Fraud and Collusion to defeat ends of justice and defraud courts." The Karnataka High Court held that the

42 AIR 2009 (NOC) 1206 (Ker).
43 AIR 2009 (NOC) 1510 (Karn).
44 AIR 2009 (NOC) 1786 (Karn).

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allegations of fraud and collusion were political in nature and required to be inquired by appropriate authority. Accordingly, the matter was ordered to be referred to *Lok Ayukta*.

XVI PIL AND POLICY MATTERS

In *Raghunath Shankar Kelkar* v. *Union of India*,[45] the PIL filed in the Bombay High Court had sought a direction to the effect that the comptroller and auditor general should be required to estimate profit and loss to the country in light of the depletion in currency and gold revaluation account of the reserve bank of India (RBI) and to file a detailed report before the court or to the President of India for laying the same in Parliament. The PIL sought implementation of a market stabilization scheme in terms of MOU between the central government and the RBI. The court declined to entertain the PIL holding that no such direction impinging on economic policy could be issued under article 226 of the Constitution. It observed that the court cannot supplant role and functioning of constitutional authorities or substitute its judgement for that of a policy making authority or for the discretion of a constitutional authority. The jurisdiction of the court in a PIL matter is exercised with a view to ensuring that there is no dereliction of constitutional or statutory duties by those who are vested with the discharge of such powers. The role of the court is directed towards ensuring that the process of governance accords with the parameters which are laid down by the Constitution and by governing statutory requirements. Once the court has satisfied itself on this account, there must be an element of deference, particularly in matters involving technical expertise or policy making functions, in relation to which there is a conferment of power upon constitutional or statutory authorities.

In *M. Rammohan Rao* v. *Union of India,*[46] the Karnataka High Court declined to entertain the PIL seeking the running of a passenger train on a particular route and other related reliefs, holding that such question lies exclusively within the domain of the railways.

In *Utkal Petroleum Dealers Association* v. *State of Orissa,*[47] the Orissa High Court declined to entertain the PIL seeking issuance of directions to the state of Orissa for formulating guidelines/norms for setting up of retail outlets along national highways, state highways, major district roads and other district roads in the state. It held that in view of the limited role it has in policy matters, the court cannot legislate and does not have the competence to issue directions to the legislature to enact the law in a particular manner.

45 AIR 2009 (NOC) 2665 (Bom).
46 AIR 2009 (NOC) 2794 (Karn).
47 AIR 2009 (NOC) 105 (Ori).

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In *Villianur Iyarkkai Padukappu Maiyam* v. *Union of India,*[48] the PIL had challenged the approval granted by the Lt. Governor of Pondicherry to the project report submitted by a private party for development of port on build, operate and transfer (BOT) basis, and had sought certain safeguards relating to the issue of environmental impact of the project. The High Court had, while issuing directions to take care of the environmental concerns, declined to set aside the award of the contract to the said party. The Supreme Court, while affirming the view of the High Court, held that "the only ground on which a person can maintain a PIL is where there has been an element of violation of article 21 or human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to the Court due to some disadvantage." The Supreme Court held that the only ground on which the petitioner could have maintained the PIL before the High Court was to seek the protection of the interests of the people of Pondicherry by safeguarding the environment, which he did. The petitioner could not proceed to challenge the commercial contract in favour of the private party as this would amount to challenging the policy decision of the government of Pondicherry through a PIL, which is not permissible.

In *Delhi Bar Association (Regd.)* v. *Union of India,*[49] the Supreme Court declined to interfere with the policy decision taken for bifurcation of Delhi into nine districts. The court recorded the contention of the NCT of Delhi that policy matters are best left for the executive/legislatures as normally it is in their domain and that the court would not interfere and strike down a policy matter taken by the authorities after due deliberation and taking into consideration all relevant aspects.

XVII PIL AND INTER-STATE WATER DISPUTE

In *Atma Linga Reddy* v. *Union of India*,[50] the issue arose before the Supreme Court as to whether a PIL seeking to restrain the state of Karnataka and a private company from constructing mini hydel power project at a water diversion scheme, which is an inter-state irrigation project covering lands in states of Karnataka and Andhra Pradesh, was maintainable. The court, after analyzing the constitutional scheme as also the Inter-State River Water Disputes Act, 1956, held that such disputes cannot be made subject matter of a petition either in a High Court under article 226 or the Supreme Court under article 32 of the Constitution. The Supreme Court observed that article 262 is probably the only provision of the Constitution, which enables Parliament to oust and exclude the jurisdiction of all courts, including Supreme Court. Moreover, article 131 of the Constitution, which enables the central government or a state government to institute certain

48 (2009) 7 SCC 561.
49 AIR 2009 SC 693.
50 AIR 2009 SC 436.

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cases in the Supreme Court on its original side, has to be harmoniously construed with article 262 and cannot be invoked in case of inter-state water disputes, particularly in view of section 11 of the 1956 Act barring the jurisdiction of the Supreme Court. Further, the 1956 Act provides for the constitution of a tribunal by the central government for adjudication of a dispute raised or complaint made by any state that the interests of the state or its inhabitants have been or are likely to be prejudicially affected. On facts, the Supreme Court noted that a dispute between the states of Karnataka and Andhra Pradesh had already been referred to a tribunal constituted under the Act and that those proceedings were pending. Holding the question of construction of mini hydel project challenged in the PIL as being very much before the tribunal and the matter being *sub-judice*, the Supreme Court held that the PIL was not maintainable.

XVIII PRACTICE AND PROCEDURE

In *Farhd K Wadia* v. *Union of India*,[51] the issue before the Supreme Court pertained to the maintainability of a second PIL seeking a relief contrary to the order passed in an earlier PIL, and that too, without impleading the petitioners of the earlier PIL in the second PIL and without filing any application for modification of the order passed in the earlier PIL. It transpired that the Bombay High Court had entertained a PIL seeking a direction to the state to curb noise pollution in general in the city of Mumbai and passed an *interim* order in this regard. During the operation of the *interim* order, another PIL was filed contending that the directions issued by the High Court were not in consonance with the rules governing noise pollution in the state of Maharashtra. The High Court dismissed the second PIL. On appeal, the Supreme Court held that if the *interim* order in the first PIL was required to be modified or clarified, the petitioner in the second PIL should have filed an application in the first PIL. An independent PIL to obtain a relief which would be contrary to and inconsistent with the *interim* order passed in the first PIL would not be maintainable in light of the doctrine of comity or amity. Interestingly, the Supreme Court observed in this case that a citizen has certain human rights being “necessity of silence,” “necessity of sleep,” “process during sleep” and “rest” inasmuch as noise is injurious to health, which must be preserved at any cost.

In *Santosh Sood* v. *Gajendra Singh,*[52] the issue before the Supreme Court was whether during pendency of civil suit by a person claiming ownership of an immovable property, directions could be issued by the High Court in a PIL to take steps for dispossession of such person in public interest without notice to him. The Supreme Court held that if a civil suit is pending (which may or may not be frivolous), ordinarily the High Court

51 (2009) 2 SCC 442.
52 AIR 2010 SC 593.

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should not entertain a PIL on the subject matter of the civil suit. It is settled law that save and except for cogent reasons, the High Court in a PIL should not interfere with the due process of law. In the instant case, the PIL was held to be uncalled for and the directions given by the Madhya Pradesh High Court were substituted by directions given by the Supreme Court to the civil court to dispose of suit expeditiously within stipulated time.

In *S P Anand* v. *State of M.P.*,[53] a full bench of the Madhya Pradesh High Court considered whether the guidelines to regulate the filing of PIL in court as contained in the order dated 9.9.1999 of a division bench of the High Court in WP No. 988 of 1999 were legally permissible. These guidelines mandated that the PIL must disclose the petitioner's social public standing/professional status and his public spirited antecedents and should be supported by an affidavit containing a statement /declaration that the issue raised had not been dealt with or decided and that a similar or identical petition had not been filed earlier. The PIL was to be accompanied by a security deposit of Rs 2000/- unless such deposit was dispensed with on the recommendation of the registrar, the PIL would not be processed for listing before the court. Media, both print and electronic, were required to desist from publishing any PIL, unless its cognizance was taken by the court by issuing notice to respondents. The High Court had dismissed successive petitions over the years challenging such guidelines. Even with regard to the deposit of Rs.2000/- being a pre-condition for filing a PIL, the High Court had held as inapplicable to PIL the *ratio* of the decision of the Supreme Court in *Prem Chand Garg* v. *Excise Commissioner, U.P.*,[54] wherein rules framed by the Supreme Court requiring deposit of security amount were held by the Supreme Court to be in violation of the fundamental right guaranteed to the citizens to move the Supreme Court under article 32 of the Constitution.

In the instant case, the full bench of the Madhya Pradesh High Court, however, set aside the said guidelines on the ground that a division bench of the High Court could not frame guidelines with regard to practice and procedure of PIL in view of the provisions of article 225 of the Constitution and section 54 of the States Reorganisation Act, 1956 inasmuch as such powers could be exercised only by the chief justice and all the judges of the High Court collectively. With regard to the requirement of payment of court fee in PIL writ petitions, the full bench of the court held that such fee is payable, notwithstanding the fact that a letter can be entertained without court fee. According to the full bench, a letter is taken up by chief justice or the designated judge *suo motu* for consideration as writ petition and hence does not attract court fee. On the issue as to whether a PIL can be entertained only on the basis of information published in the newspaper, the full bench held that normally

53 AIR 2009 MP 1.
54 1963 Supp (2) SCR 302.

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it cannot; but if the chief justice or the designated judge finds that a particular information in newspaper reveals gross violation of a fundamental right (particularly the right to life and liberty granted under article 21 of the Constitution) of a person who does not have ready access to court for some incapacity, and the chief justice or the designated judge has reason to believe that the information is true, a PIL can be entertained on the basis of such information published in the newspaper alone.

In *S. P. Anand* v. *Registrar General, High Court of M.P.*,[55] a full bench of the Madhya Pradesh High Court declined to review its opinion that court fee is payable on regular writ petitions filed as PIL under article 226 of Constitution. It clarified that court fee is payable, except where the chief justice or designated judge issues directions on the basis of information received in a letter or any other document and considers that it is a fit case for registration even though no court fee is paid on such letter or document.

In *J.P. Rai, IAS* v. *State of Arunanchal Pradesh,*[56] a full bench of the Guwahati High Court considered the question as to whether the chief justice has the prerogative to refer a PIL to a larger bench for its disposal even in relation to a part-heard matter. In the instant case, the PIL was initially assigned to a division bench of the High Court and when it was part-heard, it was assigned by chief justice by an administrative order, to a full bench of the court. The full bench relied on the decision of the Supreme Court in *State of Rajasthan* v. *Prakash Chand*[57] and traced the power of the chief justice under the Charter Act, 1861 as preserved from time to time under the successive Government of India Acts of 1919 and 1935 and article 225 of the Constitution, to hold that the chief justice is the master of the roster and has the prerogative to refer a case to a larger bench for its disposal even in relation to a part-heard matter. Dismissing the objection as to the legality of the proceedings before a full bench of the High Court when a division bench had made no such reference, the full bench held that the authority of the chief justice in fixing the roster or assigning the cases to various judges of the High Court flows not from the rules framed under article 225 of the Constitution but from the constitutional power preserved under article 225 itself.

In *Ashok Kumar Mittal* v. *Ram Kumar Gupta,*[58] the issue before the Supreme Court was whether the practice of awarding substantial costs of Rs. 50,000/- or Rs one lakh in PIL matters to check the misuse of PIL can be imported in relation to civil litigation governed by the Code of Civil Procedure, 1908 (CPC). The provisions of sections 35 and 35A, CPC suggest that even where a suit or litigation is vexatious, the outer limit of exemplary costs that can be awarded, in addition to regular costs, shall not

55 AIR 2009 MP 190.
56 AIR 2009 Gaw 151.
57 (1998) 1 SCC 1.
58 (2009) 2 SCC 656.

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exceed Rs.3,000/-. The Supreme Court held that though the award of costs by the civil court is within the discretion of the court, it is subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force; and where the issue is governed and regulated by sections 35 and 35A of the CPC, there is no question of importing inherent powers contrary to the specific provisions of the CPC or mechanically importing the practices relating to costs in writ jurisdiction.

XIX PIL AND ALTERNATIVE REMEDIES

In *Baby Manji Yamada* v. *Union of India*,[59] the petitioner was aggrieved by directions passed by the Rajasthan High Court in a PIL filed by a NGO, which was a *habeas corpus* petition for the production of baby Manji Yamada, who had been given birth to by an Indian surrogate mother. The NGO had pleaded that there was no law governing surrogation in India and, in the name of surrogation, lot of irregularities were being committed and a money making racket was being perpetuated. The petitioner, who was the grandmother of the child, challenged before the Supreme Court the *locus standi* of the NGO to file the PIL, alleging that though the petition before the High Court was styled as a "Public Interest Litigation", there was no element of public interest involved. The Supreme Court, however, noted that the Commission for Protection of Child Rights Act, 2005 has been enacted for the constitution of a national commission and state commissions for protection of child rights and of children's courts for providing speedy trial of offences against children or violation of child rights. Without going into the question of whether the NGO acted *bona fide* or had *locus standi*, the Supreme Court held that the action, if any, has to be taken by commission, which has the right to inquire into complaints and even to take *suo motu* notice of matters relating to: (i) deprivation and violation of child rights, (ii) non-implementation of laws providing for protection and development of children; (iii) non-compliance of policy decisions, guidelines and instructions aimed at mitigating hardship to, and ensuring welfare of, the children and providing relief to such children, or (iv) taking up of the issues arising out of such matters with appropriate authorities.

In *Shivanand Gauri Shankar Baswanti* v. *Laxmi Vishnu Textile Mills,*[60] a representation to the chief justice of the Bombay High Court highlighting several illegalities committed by the respondent company in not settling the dues of the workmen and selling of the property of the company by private negotiations without taking workmen into confidence

59 AIR 2009 SC 84.
60 AIR 2009 SC 825.

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was treated as a PIL and eventually disposed off by the High Court observing that the grievance of the workmen could be redressed before an appropriate forum. The complaint against sale of property by private treaty also could be adjudicated upon in proper proceedings and the controversy did not deserve to be taken up as PIL. The court granted the petitioner liberty to pursue appropriate remedies. The petitioner then filed a writ petition in the Bombay High Court under article 226 of the Constitution in his individual capacity and sought similar reliefs which was dismissed. On appeal, the Supreme Court held that the petitioner ought to have taken recourse to alternative remedies available to him had he any grievance and that it was not open to him to have filed the writ petition in his individual capacity few days after the PIL had been disposed off.

XX MISUSE OF PIL

In *All India Private Vehicle Owners Association* v. *Union of India*,[61] the grievance of the petitioner in the PIL before the Sikkim High Court was that by an act of glaring discrimination and patent arbitrariness of the state, private vehicle owners in Sikkim were being burdened with a payment of huge and heavy amount of Rs.1600/- per pair for high security registration plates (HSRP), whereas private vehicle owners in other states have to only pay Rs. 500/- to Rs. 900/- for the same. The petitioner sought the quashing of the notice of tender (NIT) purportedly issued by the state in favour of a private party. Finding that no such document was available on record, it observed that a person who approaches the court seeking relief under PIL must do his homework and furnish the entire facts and figures so as to allow the court to grant relief and declined to entertain the petition by holding on facts that "wholly private interest is in vogue in instant PIL and that too in the guise of seeking quashment of NIT, the petitioner has adopted a device to make a bargaining in the price amount of Rs 1600/- so fixed against payment of HSRP."

In *Rashtriya Kisan Dal* v. *State of Gujarat,*[62] the Gujarat High Court declined to entertain the PIL filed by Rashtriya Kisan Dal seeking the issuance of a direction to the state government not to allot agricultural land for the Tata Nano car project on the ground that it would adversely affect agriculture, power supply, *etc*. The court noted that there was nothing to show that the organization was registered as representing cause of the farmers in Gujarat or that the decision taken by the government in allotting land had in any way violated any statutory provision or statutory rules or regulations. It reiterated that a PIL filed only for media attention and publicity cannot be entertained.

61 AIR 2010 Sikkim 3.
62 AIR 2009 (NOC) 2666 (Guj).

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In *Ravi Development* v. *Shree Krishna Prathisthan*,[63] the subject matter was the award of a government tender in favour of a private party following the "Swiss Challenge method" on a pilot project basis. As per the method specified in the public notice and the bid document and accepted by all the bidders, the originator of the proposal would, in consideration of his vision and initiative, be given the option to get the tender at the highest bid submitted. Following the acceptance of the tender by the originator of the proposal, a PIL was filed in the Bombay High Court followed by a writ petition by the unsuccessful bidder, challenging the award of government tender by the Swiss Challenge method, terming the method itself as being arbitrary and unreasonable. The court entertained the PIL but struck down the method. On appeal, the Supreme Court set aside the decision of the High Court on merits and observed that the very timing of the PIL indicated that it was the failure in the bidding that had raised the question of acceptability of the Swiss Challenge method.

XXI CONCLUSION

The Supreme Court and the High Courts have in the year under review further defined the elastic contours of the unique jurisprudence of PIL. The courts have sought to maintain the delicate balance between PIL and traditional litigation by intervening in only those matters that are genuine in public interest and pertain to protection of fundamental rights of the disadvantaged and vulnerable sections of society. The variety of PILs this year underscore the need for courts to remain on constant vigil to identify issues better resolved by the executive or the legislature or through the ordinary jurisdiction of the courts. It is only then that the edge of PIL shall remain sharpened for judicial intervention for the poor, disabled and destitute.

63 (2009) 7 SCC 462.

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