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PUBLIC INTEREST LITIGATION

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I INTRODUCTION

THE SUPREME Court has, in the year under survey, emphasized[1] on the desirability of public interest litigation (PIL) in India while referring to its oft-quoted observation in *Hussainara Khatoon* v. *Home Secretary, State of Bihar*[2] made way back in 1979 that "the legal system has lost its credibility for the weaker section of the community" since it has always come across 'law for the poor' rather than 'law of the poor'. Terming the development of PIL as being extremely significant in the history of the Indian jurisprudence, the apex court recalled that PIL is not in the nature of adversary litigation but a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of the Constitution. The Supreme Court reiterated that the government and its officers must welcome PIL because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they continue to remain victims of deception and exploitation at the hands of strong and powerful sections of the community, and whether social and economic justice has become a meaningful reality for them or has remained merely a teasing illusion and a promise of unreality so that in case the complaint in the PIL is found to be true, they can, in discharge of their constitutional obligation, root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. The Supreme Court, while recalling that its decisions in the 1970's loosened the strict *locus standi* rule to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies, highlighted that the nature of remedies in PIL actions under articles 32 and 226 of the Constitution of India would include issuance of guidelines in the absence of legislation as also the monitoring of the implementation of legislation.

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1 *State of Uttaranchal* v. *Balwant Singh Chaufal* (2010) 3 SCC 402.

2 AIR 1979 SC 1369.

The Supreme Court and the High Courts have, in the year 2010, dealt extensively with PIL actions. Notable amongst these decisions are those which examined the remedial nature of PIL and laid down its norms. The courts have, however, declined to intervene in a large number of PIL actions where the grievance pertained to the administrative and policy measures or service matters. Several PIL matters have been dismissed where the courts found that the petitioner had not been able to establish his or her credentials as a public spirited individual or body, the sufficiency of public interest or the availability of an alternative remedy for the grievance highlighted in the PIL. The courts have also stressed upon mechanisms to check the misuse of PIL.

II NATURE AND NORMS OF PIL

In *State of Uttaranchal* v. *Balwant Singh Chaufal,*[3] the Supreme Court examined the remedial nature of PIL and categorised them as falling in three phases. Phase I dealt with cases of the Supreme Court where directions and orders were passed primarily to protect fundamental rights under article 21 of the Constitution of the marginalized groups and sections of the society who, because of extreme poverty, illiteracy and ignorance, could not approach the Supreme Court or the High Courts. Phase II dealt with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments and so on and so forth. Phase III dealt with the directions issued by the courts in maintaining the probity, transparency and integrity in governance. With a view to "preserve the purity and sanctity" of PIL, the Supreme Court issued specific directions as under:

- The courts must encourage genuine and bonafide PIL, and effectively curb PIL filed for extraneous considerations.
- Instead of every individual judge devising his own procedure for dealing with the PIL, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, the High Courts who have not yet framed the rules were requested to frame the rules within three months. The registrar general of each High Court was directed to ensure that a copy of the rules prepared by the High Court was sent to the secretary general of the Supreme Court immediately thereafter.
- The courts should *prima facie* verify the credentials of the petitioner before entertaining a PIL.
- The court should be *prima facie* satisfied regarding the correctness of the contents of the petition before entertaining the PIL.

3 (2010) 3 SCC 402.

- The court should be fully satisfied that substantial public interest was involved before entertaining the PIL.
- The court should ensure that the PIL which involves larger public interest, gravity and urgency is given priority over other petitions.
- The courts, before entertaining the PIL, should ensure that the PIL was aimed at redressal of genuine public harm or public injury. The court should also ensure that there was no personal gain, private motive or oblique motive behind filing the PIL.
- The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions or petitions filed for extraneous considerations.

In *S.K. Dasgupta* v. *Vijay Singh Sengar*,[4] the Supreme Court held that PIL jurisdiction was to be invoked with rectitude, and that any order made must be reasonable. The matter pertained to contempt proceedings initiated by the High Court against the state electricity board officers for failing to comply with its directions passed in a PIL to provide uninterrupted and round the clock power supply to government hospitals and to ensure electricity supply to street lights between sunset and sunrise. Further, the High Court had directed CBI inquiry into the failure of the board to comply with such directions. The Supreme Court held that shortage of power was a phenomenon common to the entire country and blaming someone for failure to comply with the given directions, which were incapable of compliance, was uncalled for, more so when there was no finding or suggestion of any misconduct. The Supreme Court further held that CBI investigation was not justified in technical and administrative matters.

In *Hari Bansh Lal* v. *Sahodar Prasad Mahto,*[5] the Supreme Court examined the scope of PIL in service matters. The court held that except for a writ of *quo warranto*, PIL was not maintainable in service matters. For issuance of writ of *quo warranto*, the High Court had to satisfy that the appointment was contrary to the statutory rules. Suitability or otherwise of a candidate for appointment to a post in government service was the function of the appointing authority and not of the court, unless the appointment was contrary to statutory provisions or rules.

In *P. Anantha Rama Sarma* v. *State of Andhra Pradesh,*[6] the Andhra Pradesh High Court relied on the case law to summarise the principles regarding the scope of PIL as follows:

4 (2010) 12 SCC 305.
5 AIR 2010 SC 3515.
6 Writ Petition No. 27609 of 2009, Order dated 30.12.2009.

- The court, in exercise of powers under article 32 and article 226 of the Constitution, can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the court. The court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the state to fulfill its constitutional promises.
- Where issues of public importance or enforcement of fundamental rights are raised, the court can treat a letter or a telegram as a PIL by relaxing procedural laws as also the law relating to pleadings.
- Whenever injustice is meted out to a large number of people, the court will not hesitate in stepping in.
- The common rule of *locus standi* is relaxed so as to enable the court to look into the grievances complained on behalf of the poor, depraved, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for violation of any constitutional or legal right.
- When the court is *prima facie* satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the state or the government from raising the question as to the maintainability of the petition.
- The question as to whether the principles of *res judicata* or principles analogous thereto would apply to PIL actions would depend on the nature of the petition as also facts and circumstances of the case.
- The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL.
- However, in an appropriate case, although the petitioner might have moved the court in his private interest and for redressal of the personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.
- The court, in special situations, may appoint commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution be taken over by such committee.
- The court would ordinarily not step out of the known areas of judicial review. While the High Courts may pass an order for doing complete justice to the parties, it does not have a power akin to article 142 of the Constitution.
- Ordinarily, the High Court should not entertain a PIL questioning constitutionality or validity of a statute or a statutory rule.

In *Humlog Trust* v. *State of Bihar*,[7] the Patna High Court held that PIL basically pertains to the interest of the collective at large that are socially backward and without means to have access to court. PIL further "encapsules and engulfs such subject matters which are of social importance" and "relate to socio-economic, socio-cultural and embedded humanitarian facets like environmental pollution, ecological balance, preservation of national interest, maintenance of roads, hospitals, availability of facilities of education and such other categories which clearly point to the public interest without any kind of design". PIL was "never conceived of to settle scores in a court of law or to give vent to personal causes to pyramid an eventuality in the guise of fight against the `City Halls', to ascribe utterances in the name of loss to the exchequer totally ostracizing the subject matter, to put forth a stand and stance that the court under exercise of its extraordinary jurisdiction will make a roving enquiry to find out the defects and the irregularities in every decision making process and search for dents and concavities in every action as if the court is required to find out the sanctuary of errors even though the subject matter relates to a different realm."

In *Soma Velandi* v. *Anthony Elangovan,*[8] the Madras High Court relied on the law laid down by the Supreme Court to hold that while entertaining PIL, the court has to be satisfied about the credentials of the petitioner, the *prima facie* correctness of the information and the specificity of the information given. The High Court held that in a PIL the "Court has to strike a balance between two conflicting interests, *viz. (i)* nobody should be allowed to indulge in wild and reckless allegation besmirching the character of others and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions." The High Court cautioned that PIL "is a weapon, which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and /or publicity-seeking in not lurking". The court emphasized that it was desirable to "filter out the frivolous petitions and dismiss them with exemplary costs so that the message goes in the right direction that petitions filed with oblique motives do not have the approval of the Courts".

III *SUO MOTU* PIL

The Bombay High Court took *suo motu* notice in *Unknown* v. *Nagpur Municipal Corporation*[9] of the news item published in a local daily exposing pathetic road conditions, rampant encroachment on the footpaths and chaotic conditions due to traffic congestion, water logging at various places in rainy

7 AIR 2010 Pat. 79.
8 (2010) 3 L.W 555.
9 PIL No. 70/10, Order dated 23.12. 2010.

season for want of proper drainage, unauthorized hotels and shops throwing garbage and dirty water on the road, coupled with unauthorized taxis and two wheelers parking on the footpaths in the surroundings of the Nagpur railway station. The High Court issued notice to the Nagpur municipal corporation, the Nagpur improvement trust, the commissioner of police, the collector, Nagpur, the road transport officer and the divisional railway manager, central railway, Nagpur. After detailing the terrible conditions, which had also given rise to the criminal acts and made life of women folk unsafe in the night time, the High Court held that such conditions were affecting the right to life of the citizens guaranteed under article 21 of the Constitution. The court observed that even the map of the flyover near the station was never approved by the planning and/or the competent authority. The effect on the increase in traffic due to visit of customers to the shops below the flyover was never studied by the authorities before undertaking the construction of the flyover. The High Court recorded non-compliance of its earlier directions requiring the shop occupants not to encroach upon the footpaths, and prohibiting hawking and parking in certain areas. The High Court issued extraordinarily detailed directions in this PIL, requiring the Nagpur municipal corporation to issue notices to all the shop occupants not to occupy, obstruct or allow encroachment in the corridors and/or footpaths constructed in front of their shops and the open area around the shopping complex, so that public could freely use the space. The shop owners were directed not to display their goods or placards either in the corridor or in the open space outside their shops. The corporation was directed to provide or erect cement poles and/or barricades with cement railings between the edge of the road and the footpath just opposite the shops constructed below the flyover, so as to prevent scooter or cycle parking on the footpath and/or open space opposite the shops. The corporation was required to collect garbage generated on the road and/or in the adjoining shops and/or the shopping complex thrice a day.

The High Court directed the corporation to require the sanitary inspector and health officer of the area to take repeated rounds, with the assistance of flying squad, of the subject area to prevent encroachment on footpaths and other corridors in front of the shops, with direction to report it to the additional deputy municipal commissioner of the corporation who would take steps within seven days to remove repeated encroachment and in the event of persistent breach despite repeated warnings, the municipal commissioner was directed to terminate the licence and/or lease, as the case may be, in accordance with law; the officers were to see that each of the shop owners maintained cleanliness and hygiene and took action against the shop owners throwing any leftover, waste water, filthy material and/or garbage either in front of their shop, or on the footpath or the public road. Initially; the officers were to issue spot warning to the defaulting shop occupants and to report such instances to the additional deputy municipal commissioner/the municipal commissioner, who was to immediately take steps to prevent recurrence of such instances as also stringent punitive action including cancellation of the licence and/or lease, as the case may be; any dereliction of duty by the sanitary

inspector and health officer of the area was to be treated as misconduct and breach of the court's order.

The corporation was further directed to maintain the road free of potholes and to provide proper drainage between the footpaths and the shops along with a proper sanitary system to drain out waste water from the shops, including rain water in the rainy season and to make available public parking free of costs to the citizens visiting the shopping complex and/or the railway station, as the case may be. The police commissioner of Nagpur was requested to post one lady police constable to monitor proper parking and to prevent misuse of parking space. The corporation was required to declare certain areas as 'no hawking zone' and not to allow any vendor to squat on the roadside or on footpath or in the open corridor opposite the shopping complex. The corporation was directed not allow any hotel or eating house in the shops below the flyover, and to ban the use of gas cylinders, big ovens, furnaces (*bhatties*), stoves and kerosene. The concerned officer was to seize these articles whenever found, forfeit the same and impose heavy cost. The corporation was asked to consider the necessity of shifting octroi booth to some other suitable place and to relocate it in such a manner that it did not cause any traffic congestion or obstruction. The municipal corporation/Nagpur improvement trust was also directed to provide public utility and adequate parking place as sanctioned under the development plan.

The High Court directed the commissioner of police, Nagpur, the additional commissioner of police (traffic), the road transport authority and the divisional commissioner, Nagpur division, Nagpur to declare certain areas as 'no parking zone' and to regulate auto rickshaws, cycle rickshaws and taxi traffic in such a manner that it would cater to the need of the travelling public in the best possible manner. These authorities were not to allow any parking on roads and footpaths, except in parking slot. No parking of taxis was to be permitted except in the railway station compound to the extent taxis could be accommodated. The commissioner of police was directed to deploy adequate number of staff round the clock to maintain law and order and to provide all police assistance to the corporation authorities to properly maintain public parking places. The railway authorities were directed to take all necessary steps to develop the railway station yard including eastern side (cotton market side) so as to take care of the traffic congestion on the western (front) side of the railway station.

The High Court held that any breach of the court's order brought to the notice of the court by *amicus curiae* and/or any NGO and/or any citizen of the town with evidence like photographs, would be highly appreciated and that the High Court would take immediate cognizance of such complaint and/or breach so as to see that its order was implemented in its true letter and spirit. The High Court put on notice all the authorities that in the event any breach of the order was reported or brought to the notice of the court, the same shall be dealt with sternly and the court shall not hesitate to take action, including the action under the provisions of the Contempt of Courts Act.

In *Suo Motu Proceedings* v. *SNDP Yogam,*[10] the Kerala High Court *suo motu* directed the registry to register a PIL to address the regulation of public processions. Reiterating the directions issued in its previous two decisions,[11] the High Court further directed that the processions should be in an organised manner and that if any violation or damage to either public or private parties was caused, the responsibility would be with the organisers and law enforcing agency. The High Court required that its directions shall be immediately announced on the roads by public address system as well as on electronic media for the knowledge of the public, especially for the commuters.

IV RELAXATION OF *LOCUS STANDI* RULE

In *B.P. Singhal* v. *Union of India,*[12] the Supreme Court permitted the petitioner to maintain PIL to the extent it sought that the Governors of the States of Uttar Pradesh, Gujarat, Haryana and Goa removed on 2.7.2004 by the President of India on the advice of the union council of ministers should be allowed to complete their remaining term of five years. The Supreme Court opined that since the PIL raised an important public issue as to the scope of "doctrine of pleasure" and involved the interpretation of article 156 of the Constitution, it would not deny *locus* to the petitioner for raising that issue, even though the Governors had not approached the court.

In *P. Narayana Reddy* v. *Govt. of A.P.,*[13] the Andhra Pradesh High Court upheld the *locus standi* of the petitioners to impugn the government order awarding the contract of road work to a private body on a nomination basis without inviting tender, notwithstanding the fact that the petitioners were not competing tenderers, but merely individuals who wanted to avoid shifting from their villages. The High Court held that the facts and circumstances of the case did not justify deviation from the well accepted and transparent norm of awarding contracts through the tender process instead of on nomination basis, and, hence, the state action was in violation of article 14 of the Constitution. Since the impugned contract was awarded on nomination basis without tenders being invited, the question of a competing tenderer challenging the award of the road work did not arise. The High Court observed that while the petitioners might not have the wherewithal to execute the road work, law is a social auditor and this audit function can be put into action only when someone, with public interest in mind, ignites the jurisdiction of the court. If public revenues are to be dissipated, it would require a strong argument to convince the court that the representative segments of the public would have no right to complain of the infraction of public duties and obligations. Even

10 WP (C).No. 2305 of 2010 (S), Order dated 22.1.2010.

11 *Kerala Vyapari Vyavasayi Ekopana Samithi* v. *State of Kerala*, 2004 (2) KLT 857 and *George Kurian* v. *State of Kerala*, 2004 (2) KLT 758.

12 (2010) 6 SCC 331.

13 (2010) 3 ALT 392 (DB).

in cases where the petitioner may have moved the court for redressal of personal grievances, the court, in the interest of justice and in furtherance of public interest, may enquire into the state of affairs of the subject matter of litigation. Larger public interest would require adherence to the norm of inviting tenders for award of contracts. The petitioners cannot, therefore, be non-suited merely because they are not competing tenderers. Even if the petitioners were motivated by their personal interest of avoiding shifting from their villages, it must be borne in mind that any other member of the public, to whom the motive and conduct alleged against the petitioners in the present case, could not be attributed, might file the PIL for the same relief. That being so, the relief claimed by the petitioners in the PIL, without seeking any relief personal to them, ought not to be dismissed merely on this ground since this was a matter of public concern and relates to the good governance of the state itself.

In *Sri K. Srinivasulu* v. *Government of A.P,*[14] the Andhra Pradesh High Court upheld the *locus standi* of a practising advocate to file the PIL impugning the order of the government which failed to grant sanction to prosecute a government employee for offences punishable under the Prevention of Corruption Act, 1988. It transpired that in an earlier PIL pertaining to grant of sanction for prosecution in all criminal cases relating to disproportionate assets, the division bench of the High Court had directed the anti-corruption bureau (ACB) to furnish details of the cases wherein it had recommended prosecution in the past five years. As regards the particular employee in question, the ACB had, after inquiry, submitted the final report to the state wherein a finding was recorded that the employee had acquired assets of over rupees forty-three lakhs disproportionate to his known sources of income. The state, however, directed initiation of a departmental enquiry against the employee and made no mention regarding sanction for his prosecution, leading eventually to the closure of the F.I.R. against the employee. On the PIL now being filed, the High Court held that exercise of discretion by the competent authority to refuse or to accord sanction must be in accordance with law and, as the competent authority is required in law to assign reasons for not considering it necessary to accord sanction for prosecution, the exercise of discretion in the present case was illegal. The High Court upheld the *locus standi* of the petitioner to file the PIL on the reasoning that a challenge to the order refusing to accord sanction for prosecution under the Prevention of Corruption Act, 1988 should not be lightly brushed aside. Refusal to accord sanction, where a *prima facie* case of corruption was made out, would encourage others to indulge in similar acts. The High Court held that it would be failing in its duty if it were to turn a blind eye to the ever increasing acts of corruption by public officials. In a PIL regarding acquisition of alleged wealth, it would be wrong in law for the court

14 Writ Petition No. 14967 of 2009, Order dated 26.2.2010.

to judge the petitioner's interest without looking into the subject-matter of his complaint, and if the petitioner shows failure of public duty, the court would be in error in dismissing the PIL. Even in cases where the petitioner may have moved the court for redressal of personal grievances, the court, in the interest of justice and in furtherance of public interest, may enquire into the state of affairs highlighted in the PIL. While the government must severely deal with all those indulging in acts of corruption, the failure of the government to do so would not justify the refusal by the court to entertain a PIL, questioning the action of the government in not according sanction for prosecution in a particular case.

In *Rao* V.*B.J Chelikani* v. *Government of Andhra Pradesh,*[15] the PIL filed in the Andhra Pradesh High Court challenged government orders allotting public lands to societies whose members comprised M.L.As**,** M.L.Cs, M.Ps., and government officers. The allotments had been impugned as being violative of "public trust" doctrine. The PIL had been preceded by an earlier litigation in which the High Court had quashed the allotment of public lands directly in favour of the M.L.As**,** M.L.Cs, MPs and government officers. The present PIL was filed by certain individuals and organizations who gave a detailed account of their credentials in espousing public causes, which was not doubted by the respondents. The High Court, therefore, upheld the *locus standi* of the petitioners who, as members of public, could legitimately claim that impugned allotments of land affect them personally as well as millions of citizens of the state.

In *Campaign for Housing and Tenural Rights (CHATRI), a Regd. Society, Hyderabad* v. *Government of A.P.,*[16] the Andhra Pradesh High Court upheld the *locus standi* of the petitioner to challenge the sale of land of the housing board as being in violation of the provisions of the A.P. Housing Board Act, 1956. The High Court found that the petitioner was a registered society engaged in campaigning and organizing peoples' struggle for housing, and was not seeking any personal relief. In the absence of any material to show that petitioner was acting for extraneous reasons and not in public interest, the High Court declined to dismiss the PIL on the ground of lack of *locus standi,* especially since this was a matter of public concern and related to good governance of the state itself.

In *Humlog Trust* v. *State of Bihar*,[17] however, the Patna High Court declined to relax the rule of *locus standi* in favour of the petitioner trust which had filed the PIL complaining about violation of statutory provisions in the grant of exclusive privileges to the liquor vendors. The High Court held that the persons affected by the infraction of any of the statutory provisions or any illegal grant, could always come forward and litigate their grievances. Such affected persons did not, according to the High Court, belong to that strata

15 2010 (2) ALT 94 (DB).
16 (2010) 3 ALT 252 (DB).
17 AIR 2010 Pat. 79.

of society who could not fight for their interest or protect their rights. A trust cannot come forward to espouse such a cause in the garb of loss to the public exchequer as that would tantamount to structuring a public interest where there was remotely none.

In *P. Anantha Rama Sharma* v. *State of Andhra Pradesh,*[18] the PIL filed by a resident of Hyderabad in the Andhra Pradesh High Court challenged the decision of the *tirumala tirupathi devasthanam's* board (TTDB) in respect of a project of *'ananda nilayam anantha swarnamayam'* (ANAS). The Board decided to provide gold plating to the main *sanctum sanctorum* of the presiding deity of *tirumala* in Chittoor district. The grievance of the petitioner was that such gold plating would necessarily require stringent security measures and thereby cause inconvenience and hardship to the visiting pilgrims, and that if *ananda nilayam* is covered with gold, the inscriptions on the walls of the temple (epigraphs) would be unavailable to the people visiting the temple. Noting that no fundamental right of the petitioner had been violated, the court held that the petitioner lacked *locus standi* to impugn the policy decision of the TTDB.

In *Forum for Sustainable Development* v. *Union of India,*[19] the PIL challenged the environmental clearance accorded by the ministry of environment and forests, New Delhi permitting the setting up of 2640 megawatts (4 x 660 MW) thermal power project at village *Srikakulam*, district *Kakarpalli*, Andhra Pradesh, on the ground that the entire area earmarked for the project site was forest and swamp land, and that the thermal project would damage the ecology. The High Court found that the PIL was filed on behalf of the society through a person who was not the president of the society as mandated by the Societies Registration Act, 1860, and was, therefore, not maintainable at his instance. As regards the *locus standi* of the individual himself, the High Court held that he had failed to explain his credentials, *locus* and *bona fides* satisfactorily to the court as also the sufficiency of public interest in the matter.

In *Ramvao Shimay* v. *The Estate of Manipur*,[20] the PIL filed in the Gauhati High Court sought annulment of the notification effecting delimitation of the district council areas in the State of Manipur, as well as the notification publishing the Manipur (Hill Areas) District Councils (Election of Members) Rules, 2009. A writ of mandamus was also sought to direct the state to extend the provisions of the VI schedule of the Constitution to the State of Manipur and to restrain the state from holding the elections of the autonomous district councils till then. The Gauhati High Court found that the petitioners, who claimed to be public spirited and social minded members of the scheduled tribes community of the state, did not disclose any foundational facts justifying such representation or the reason for the inability of the other

18 Writ Petition No.27609 of 2009, Order dated 30.12.2009.
19 Writ Petition No. 9360 of 2009, Order dated 13.7.2010.
20 PIL No. 36 of 2010, Order dated 14.9.2010.

members of the said committee to join them in the issue. Except for a statement that the instant proceeding had been filed by them in the interest of the public of the state who were residing in the hill areas, there was no other demonstrable fact or evidence in support of the same. The High Court found that there was no *prima facie* evidence that the petitioners had the *locus standi* to espouse a public cause on behalf of a sizable segment of the society whose legal and/or fundamental rights had been infringed by the alleged inaction on the part of the state in not completing the process of submission of its report with the central government for extension of the provision of the VI schedule of the Constitution to the State of Manipur.

V PROCEDURAL LAW

In *State of U.P.* v. *Neeraj Chaubey*,[21] the question which arose for consideration before the Supreme Court was whether the Allahabad High Court, while hearing a writ petition, was justified in taking up an unconnected cause by treating the letter as a PIL. It transpired that the writ petition filed in the High Court had not been listed as per rules. The High Court, therefore, issued a show cause notice to the registry, which responded by highlighting the problems relating to want of space for keeping the court records, sitting space for officials and officers of the registry. The High Court, while hearing the writ petition, passed directions to the state government to submit a status report regarding the sanctioning of funds for construction of new High Court building complex at Gomati Nagar, Lucknow and further directed the cabinet secretary, the chief secretary and the principal secretary (law) of the State of U.P., as also the member secretary, planning commission and the representative of the ministry of law and justice not below the rank of joint secretary, Government of India to appear in person along with the records on the next date of hearing. On appeal, the Supreme Court concurred with the need of the spacious building for the Allahabad High Court at Lucknow and the necessity for directions regarding construction of new High Court building and early sanction of the required funds for the execution of the work. However, the apex court disapproved the procedure adopted by the High Court by treating such cause as a PIL in an unconnected matter, as also the bench keeping the cause before itself. The Supreme Court held that the Chief Justice is the master of the roster, and has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in sub-section (3) of section 51 of the States Re-organisation Act, 1956, but inheres in him in the very nature of things. If the judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the

21 Special Leave to Appeal (C) No.26922-26923/2010, Order dated 16.9.2010.

court would collapse and the judicial work of the court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The apex court relied upon the earlier decisions of the High Court on this very issue, which had emphasized that strict adherence to the procedure was essential for maintaining judicial discipline and proper functioning of the court. In case an application is filed and a bench comes to the conclusion that it involved some issues relating to public interest, the bench should not itself entertain it as a PIL, but had the option to convert it into a PIL and ask the registry to place it before a bench which has jurisdiction to entertain the PIL as per the rules, guidelines or by the roster fixed by the Chief Justice. The bench cannot itself proceed with the PIL. The Supreme Court, in the present matter, stayed the impugned directions of the High Court, while permitting the petitioner to move the Chief Justice of the High Court for appropriate directions on the cause highlighted in the PIL.

In *Pranjivan Harijivan Parmar* v. *State of Gujarat*,[22] the Gujarat High Court insisted that the PIL be in accordance with the High Court of Gujarat (Practice & Procedure for Public Interest Litigation) Rules, 2010, and declined to entertain the PIL in its present form on such ground. Similarly, in *Kailash Chaudhary* v. *State of U.P.,*[23] the Allahabad High Court declined to entertain the PIL in its present form as it was not in conformity with the amended rules relating to PIL.

In *Rao* V.*B.J Chelikani* v. *Government of Andhra Pradesh*,[24] the PIL filed in the Andhra Pradesh High Court challenged government orders allotting public lands to societies whose members comprised M.L.As, M.L.Cs, M.Ps., and government officers. The PIL had been preceded by an earlier litigation in which the High Court had quashed the allotment of public lands directly in favour of the M.L.As, M.L.Cs, M.Ps. and government officers. The High Court declined to apply the doctrines of *res judicata* or constructive *res judicata* to the present PIL. The High Court reasoned that merely because the petitioners had not challenged the initial allotment in favour of the said individuals did not disentitle them to file the present PIL as fresh allotment of lands made by impugned government orders had given rise to a fresh cause of action to every member of general public to question the said allotments. As regards the further question as to whether belated claims could be entertained in a PIL, the High Court held there was no *laches* in presenting the present PIL as the same was filed within a few months from the date of the impugned government orders. In any case, allotment of vast extents of public land affords a continuing cause of action.

22 Writ Petition (PIL) No. 1 of 2010, Order dated 13.12.2010.
23 PIL No. 41030 of 2010, Order dated 16.7.2010.
24 *Supra* note 15.

In *Campaign for Housing and Tenural Rights (CHATRI), a regd. Society, Hyderabad* v. *Government of A.P.*,[25] the Andhra Pradesh High Court entertained the PIL filed in the year 2008 that challenged a government order of 2005 directing housing board to sell its land to the private respondent as being in violation of the A.P. Housing Board Act, 1956. The High Court dismissed the defence of delay and *laches*, holding that all *ultra vires* acts are a nullity and such acts should be declared as void in larger public interest.

VI ADMINISTRATIVE AND POLICY MATTERS

In *Common Cause (A Regd. Society)* v. *Union of India*,[26] the PIL pertained to the increase of the non-recovered loans (namely, non-performing assets or "NPAs") advanced by the public and private sector banks in the country which, according to the petitioner, resulted in substantial funds of banks not being available for development of the national economy. The petitioner alleged that the steps taken by the union government to recover the NPAs had not yielded positive results, thereby prejudicing the citizens. The Union of India claimed that various legislative measures such as the DRT Act, the SARFAESI Act, 2002, the Credit Information Companies (Regulation) Act, 2005 and also administrative measures had been taken to reduce the number and amount of NPAs and to detect and check bank frauds in future. The Supreme Court declined to entertain the PIL holding that not only did the case not involve the enforcement of a fundamental right, the effectiveness of the legislative and administrative measures taken by the union government was not within the judicial domain. The apex court referred to the case law to hold that it was not for courts to sit in judgment whether a particular policy decision of the government was effective or not. Indeed, it was for Parliament to debate and decide on the policy decision.

In *Sudhakar Singh* v. *State of U.P*,[27] the Allahabad High Court dismissed as misconceived the PIL seeking a mandamus commanding the state to reconsider and change the reservation policy. In *Ramvao Shimay* v. *The Estate of Manipur,*[28] the Gauhati High Court dismissed the PIL seeking the direction to the state to extend the provisions of the VI schedule of the Constitution to the State of Manipur and to restrain them from holding the elections of the autonomous district councils till then. The Gauhati High Court found that the elections had already been held. The plea of extension of the provisions of the VI schedule of the Constitution to the State of Manipur as a precondition for holding such elections thus lost all significance. The High Court held that the petitioners cannot insist for a direction to the state government to extend the

25 *Supra* note 16.
26 AIR 2010 SC 3351.
27 PIL No. 4710 of 2010, Order dated 1.2.2010.
28 *Supra* note 20.

provisions of the VI schedule of the Constitution to the State of Manipur as the matter dominantly was in the realm of executive policy and contingent on a host of considerations of which the state government was the best judge. Even otherwise, a recommendation of the state government in favour of the application of the VI schedule of the Constitution of India to the tribal areas of the hill districts of the State of Manipur would be "catapulted into the domain of Parliamentary Rubric perfunctory to the consequential constitutional amendment". The High Court relied on the law laid down by the Supreme Court that generally the courts do not, in the exercise of their power of judicial review, interfere with such policy unless the policy so formulated either violates the mandate of the Constitution or any other statutory provision or was otherwise actuated by *mala fides*. The petitioner, therefore, had no vested fundamental right to compel the Union of India to bring forth a particular legislation or to exercise its discretion in a particular manner in Parliament. A court of law should guard against itself legislating on a matter or directing the legislature to enact a law or requiring executive authority to exercise its power of delegated legislation to make laws or otherwise encroach into sphere of the other organs of the state.

In *P. Anantha Rama Sarma* v. *State of Andhra Pradesh,*[29] the Andhra Pradesh High Court found that the policy decision of Tirumala Tirupathi Devasthanam's (TTD) Board impugned in the PIL, which had decided to provide gold plating to the main *sanctum sanctorum* of the presiding deity of Tirumala in Chittoor District, was non-justiceable. The High Court held that policy decisions were not justiceable in a writ court unless there were demonstrable *mala fides* attributable to public authorities. In this PIL, it was not in dispute that the administration and management of TTD was entrusted to statutorily constituted board of trustees, which had the powers to take such policy decisions having regard to the public interest, services, safety measures and amenities to be provided for the pilgrims. The High Court held that issues such as gold plating of the *sanctum sanctorum*, construction of temples, and protection of ancient monuments were ordinarily not amenable to strict scrutiny of the court.

In *Shri Uday Shankar Hazarika* v. *State of Assam*,[30] the PIL filed in the Gauhati High Court by the president of a registered society sought appropriate orders for the constitution of a particular water body into a bird sanctuary in order to prevent potential loss which might be caused to the ecology and environment of the area on account of people using the water body as a fishery. The High Court declined to entertain the PIL, holding that the question whether the water body was to be declared as a bird sanctuary or the same would be more appropriate for use as a fishery was a matter primarily for governmental decision and cannot be decided by the courts.

29 *Supra* note 18.
30 PIL No. 6/2007, Order dated 16.2.2010.

In *Amit Maru* v. *State of Maharashtra,*[31] the PIL filed in the Bombay High Court challenged the state notification sanctioning the modification to regulation 32 of the Development Control Regulation for Maharashtra, 1991 under section 37(2), M.R.T.P Act. By the impugned notification, the floor space index (FSI) in the suburbs and extended suburbs of Mumbai was increased on the respective plots from 1 to 1.33. The government further levied premium based on the ready reckoner value of land per square meter, ranging from Rs.7000/- to Rs. 23000/- per sq. meter in different areas and localities of suburbs and extended suburbs. The petitioner challenged the notification, *inter alia*, on the ground of it being hit by articles 14 and 21 of the Constitution. The petitioner contended that wholesale change in the character of development plan would violate article 14 and the amendment of the development plan, without assessment of its impact on infrastructural facilities, will affect the right to quality of life thereby violating article 21. Further, the levy of the premium was impugned as being arbitrary and illegal. The Bombay High Court relied upon the law laid down by the Supreme Court for the proposition that the challenge to delegated legislation could only be on the ground of manifest arbitrariness, unreasonableness, *ultra vires* or being violative of fundamental rights, The High Court, while agreeing that basic amenities such as roads, recreation grounds, gardens and other civil facilities were the right of every individual in the country enshrined under article 21 of the Constitution, held on the facts of the present case that there was no violation of article 14 or article 21. The High Court held that in such cases, the courts must give judicial deference to legislative judgment, more so, in the case of economic regulation. The High Court, however, struck down the impugned notification as being *ultra vires* the MRTP Act since there was no provision in the said Act expressly or specifically authorizing the levy of premium based on the ready reckoner value of land per square meter as had been done. Since it was not possible to severe the notification from the grant of additional FSI and charge of premium, the entire notification had to be struck down. Interestingly, in doing so, the High Court overruled the objection of the state that the petitioners had not raised certain pleas specifically in this regard. The High Court held that PIL being non-adversarial in nature, public interest must prevail. Mere absence of some pleadings or some grounds will not prevent a constitutional court from examining the real issues in controversy at the instance of public spirited citizens.

In *Shramik Vikas Sansthan* v. *Union of India,*[32] the PIL filed in the Gujarat High Court pertained to the merger of the Dang territories, which were forests, into the state. On such merger, the government decided to protect the status, rights and privileges of the dang chiefs and *naiks*. Noting that the dang chiefs and naiks were illiterate, the government resolution provided that

31 PIL No. 94/2008, Order dated 10.6.2010.
32 SCA/176/2010, Order dated 13.1.2010.

the *mamlatdar* will control the financial interests of the dangs and naiks who would be paid as "political pension". The PIL challenged such resolution in terms of which the dang chiefs and naiks were to be granted meagre benefits in lieu of the rights and privileges of the land as "political pension". The High Court dismissed the PIL, holding that the merger was done in public interest and that the status of rajas, including the powers and rights of the dang chiefs and naiks, were taken away. Further, the High Court held the question as to whether the "political pension" of the dang chiefs and naiks should be enhanced or not to be non-justiceable in a writ petition.

In *Ekram* v. *Executive Officer, Nagar Palika,*[33] the Allahabad High Court declined to entertain the PIL which challenged the shifting of the premises of the nagar palika on the ground that no resolution had been passed by the nagar palika for such purpose. The High Court held that shifting of the premises is a purely administrative action and, as such, the court would not interfere in exercise of extraordinary jurisdiction, unless the petitioner was able to make out a case of arbitrariness or *mala fide* action.

VII SERVICE MATTERS

In *Girijesh Shrivastava* v. *State of M.P*,[34] the Supreme Court reiterated that that PIL was not maintainable in service matters, while dismissing the matter relating to selection and appointment of employees. In *Hari Bansh Lal* v. *Sahodar Prasad Mahto.*,[35] the Supreme Court reversed the decision of the division bench of the Jharkhand High Court which had, in a PIL filed by a *vidyut shramik* leader, quashed the appointment of the appellant as the chairman of the Jharkhand state electricity board. The Supreme Court, after examining various statutory provisions relating to the constitution and composition of state electricity boards as given in the Electricity (Supply) Act, and the limited scope of PIL in service matters, permitted the appellant to continue as chairman of the electricity board.

In *Dwarika Kumar Singh* v. *State of U.P.,*[36] the Allahabad High Court dismissed the PIL praying for transfer of the constables and head constables of excise department so that the hooch tragedies occurring on account of spurious liquors as well as the financial loss of the state government caused due to smuggling, sale and manufacturing of spurious liquors may be stopped. The High Court relied on the law laid down by the Supreme Court to hold that such PIL in service matters was not maintainable. The High Court, however, observed that the dismissal of the PIL would not necessarily mean that the state government will not take into account the issue and examine the same

33 PIL No. 38485 of 2010, Order dated 6.7.2010.
34 (2010) 12 SCC 694.
35 AIR 2010 SC 3515.
36 PIL No. 17918 of 2010, Order dated 2.4.2010.

properly at the earliest. In *Alakh Niranjan Pal* v. *State of U.P.,*[37] the Allahabad High Court dismissed the PIL challenging the selection and appointment of *safai karmchari* in district Sonbhadra, holding that PIL was not maintainable in service matters. In *Brijesh Mohaur* v. *State of U.P.*,[38] the Allahabad High Court declined to entertain the PIL challenging the validity of appointments of *aganwadi karyakatri*

VIII PIL AND ARBITRARY STATE ACTION

In *People's Union for Civil Liberties* v. *Union of India*[39], and *Kapila Hingorani* v. *Union of India,*[40] the Supreme Court passed several directions in the PILs pertaining to the rotting of huge amount of foodgrains due to inaction and negligence of the state. Holding that every poor person must be ensured of two square meals per day, the Supreme Court required the Government of India to consider taking short term measures to deal with this problem of rotting foodgrains such as increasing the quantum of food supply to the population below the poverty line, opening the fair price shops for all the 30 days in a month, and distributing foodgrains to the deserving population at a very low cost or no cost. The Supreme Court referred to its earlier order extending the coverage of *antyodaya anna yojana* to landless agricultural labourers, marginal farmers, rural artisans/craftsmen, slum dwellers and persons earning their livelihood on a daily basis in the informal sector in both rural and urban areas, as also households headed by widows or terminally ill persons/disabled persons/persons aged 60 or more having no assured means of substance or societal support and all primitive tribal households. The Supreme Court further directed that a survey be conducted to get a clearer picture of the targeted population and to allocate according to 2010 population estimates. The court recommended the abolition of the category of the above poverty line altogether, and observed that in case it was not possible to do so, the government should at least consider limiting households whose annual income was less than rupees two lakhs per year.

The Supreme Court further recorded that according to the court commissioner's report, about 50000 metric tonnes of wheat had already deteriorated and was unfit for human consumption. Several lakh metric tonnes of procured wheat had not been properly preserved. The Supreme Court required the Food Corporation of India to properly evaluate the capacities of its godowns, and procure only that much food-grains which could be properly preserved.

In *Mankuzhy Nagar Resident's Association* v. *District Collector,*[41] the PIL filed in the Kerala High Court by a residents' association raised the issue

37 PIL No. 42695 of 2010, Order dated 23.7.2010.
38 PIL No. 2713 of 2010, Order dated - 25.1.2010.
39 W.P. (C) No. 196/2001, Order dated 12.8.2010.
40 W.P. (C) No. 277/2010, Order dated 12.8.2010.
41 WP(C).No. 20618 of 2007(S), Order dated 11.2.2010.

of large scale encroachment of revenue land by different occupants of *patta* lands, and sought the re-doing of the survey documents issued in relation to the area. Acting on the PIL, the High Court issued an order requiring publication of notice of the PIL in a newspaper and directed the district collector to start the survey afresh. The stand of the municipality was that following the survey, the municipality has fixed boundary stones and was taking due care and caution to ensure that there was no tampering of the boundaries. The High Court held that it was in the public interest that the municipal officers be treated to have a public duty to ensure that the land vested in the municipality was promptly protected. The High Court, accordingly, fixed the personal responsibility of the municipality officers to make strict vigil and supervision so as to ensure due protection of such land.

In *Dandeswar Buragohain* v. *State of Assam,*[42] the petitioners were the residents of various villages in the district of Dhemaji and were aggrieved by the misuse of the land allotted for grazing purposes under the rules framed under the Assam Land and Revenue Regulation, 1886. The petitioners sought an appropriate direction from the Gauhati High Court in their PIL for the eviction of a private party who had been illegally inducted into the said land by the state, thereby denying the petitioners their right to graze their cattle thereon. Such state action was impugned on the ground that, in earlier proceedings, the High Court had found the land in question to be part of the village grazing reserve (the VGR) and directed the concerned deputy commissioner to keep the VGR free from all sort of encroachment and to ensure that nobody was given any right therein, except the common right of grazing cattle for which it had been reserved. Indeed, the petitioners had been evicted in previous proceedings for trespassing on the same land. The private party, on its part, had lodged a FIR alleging unauthorized trespass and damage against the petitioners when they had sought to graze their cattle on the land. The state denied encroachment by the private party and claimed that the land was being used for sericulture purposes by the department of sericulture which was legally permissible. The Gauhati High Court entertained the PIL, notwithstanding disputed facts, primarily because of the earlier determination that the land in question was part of VGR and the admitted position that the state had not de-reserved such land or changed the nature of its use. The High Court disposed off the PIL by issuing directions to the commissioner and the secretary, government of Assam to ascertain the present status of the land and the nature of its user, and that if the land was determined to be a VGR, to ensure that it was not put to use for any other purpose.

In *Raj Kumar Gupta* v. *State of Jharkhand,*[43] the Jharkhand High Court allowed the PIL challenging the use of school buses for conducting election proceedings. The High Court held that any facility like school building or use of vehicles including school buses should not be allowed to be used for

42 PIL No. 64/2009, Order dated 21.9.2010.
43 2010 (2) JLJR 479.

election purposes on a working day as that was bound to hamper teaching facilities and school curriculum. In *Pravanjan Patra* v. *Republic of India,*[44] the Orissa High Court allowed the PIL seeking a writ of mandamus requiring the handing over to the CBI the investigation into offences committed for erosion of Forex reserve of the country. In *Mohd. Yusuf Tarighani* v. *State of J & K,*[45] the Jammu & Kashmir High Court entertained the PIL highlighting the grievance of the inhabitants of Kulgam, Anantnag that the administration was not utilizing funds already allotted by the state government for construction of a sub-district hospital. In *Shri. Shaligram Singh* v. *Md. Tahir,*[46] the Jharkhand High Court entertained the PIL to direct the CBI to investigate the "Bitumen scam", in order to fix responsibility for precarious condition of roads or non-existent roads in State of Jharkhand. In *Awadhesh Pandey* v. *C/M, Ratsar Intermediate College*,[47] the Allahabad High Court entertained the PIL alleging that the teachers were appointed beyond the sanctioned strength of posts. The High Court directed the respondents to place on record the number of posts created and sanctioned in the district of Balia for payment under the Payment of Salaries Act, 1971 as also the record pertaining to the number of teachers, who were paid salary from the state exchequer.

In *Merchants Association* v. *State of Kerala,*[48] the PIL filed in the Kerala High Court related to the proposed acquisition of land for the formation of Thrissur - Vadanappally road. The petitioners pleaded that there was an effective alternate possibility of constructing the road at a different place, and, therefore, the proposed plan should be reconsidered as it would displace the people on either side of the proposed road. The High Court took the view that in such matters an expert advisory body or commission is required to assist the public works department. The High Court disposed of the PIL with a direction to the state government to obtain advice from the national transportation planning and research centre (NATPAC) before finalization of its proposal, and also to give the persons residing on both sides of the proposed road an opportunity of hearing through their representatives since they would be affected by the present plan.

In *Sudhir Kumar Ojha* v. *Union of India,*[49] the Patna High Court entertained the PIL seeking directions for the early completion of a railway overbridge in the town of Muzaffarpur, and disposed of the same on the affidavit filed by M/s. Ircon Ltd. that the railway overbridge was on the verge of completion. In *Shama Bano* v. *State of U.P.,*[50] the grievance before the Allahabad High Court pertained to the inaction on the part of the authorities

44 109 (2010) CLT 817.
45 2010(4) JKJ 185.
46 2010 (58) 1 BLRJ 0385(Jhar).
47 PIL No. 2830 of 2010, Order dated 25.1.2010.
48 WP(C).No. 2070 of 2010 (S), Order dated 22.1.2010.
49 CWJC No.4861 of 2009, Order dated 10.12.2010.
50 PIL No. 33247 of 2010, Order dated 2.7.2010.

to take steps against unauthorized occupants of public utility land. On a perusal of the report annexed with the writ petition which indicated that the inquiry was incomplete, the court directed the state to conclude the pending inquiry within two months from the date of judgement, and thereafter to take action in accordance with law.

In *Kasargode District Two-Wheelers Association* v. *State of Kerala,*[51] the PIL filed in the Kerala High Court sought quashing of a prohibitory order issued by the inspector general of police, north zone, Kannur, on the ground of it being illegal and in violation of the provisions of Motor Vehicles Act, 1988 as also the constitutional right of free movement throughout India. The said order, applicable to two wheeler riders and pillion riders other than children below the age of five years, person above fifty years, patients and ladies, required that only one person could travel in motor bike within the specified areas for an initial period of three months. The petitioners contended that under the guise of ensuring its objects, the local police were harassing the general public. The state refuted the allegation of the petitioners, citing the need for the prohibitory order to maintain communal harmony in the specified areas. It was submitted that most of the offences like pelting stones or bombs, causing hurt or death by stabbing or hitting were caused by the pillion riders who could move fast while sitting on two wheelers, and, thereby, escape from the place of incident easily. The state detailed various incidents of pillion riders attacking the police and general public by pelting stones and soda bottles, resulting in injuries to many police personnel who were on duty. The impugned state action was, according to the police, a preventive measure which had reduced the misuse by pillion riders drastically. The High Court upheld the state action as being a reasonable restriction in terms of article 19(4) of the Constitution, holding that safety of the citizens and their properties tooks priority over individual comfort. However, the High Court, with a view to avoid any kind of harassment to the public, directed the police authorities to review the situation once in every three months and ensure that no harassment in any manner was caused to the general public.

IX MISUSE OF PIL

In *State of Uttaranchal* v. *Balwant Singh Chaufal*,[52] the Supreme Court held that when a controversy was no longer *res-integra* but raised repeatedly through a PIL, it not only wastes the precious time of the court and prevents the court from deciding other deserving cases, but was also a clear abuse of the process of law. In this case, the High Court had entertained the PIL challenging the appointment of the advocate-general of Uttarakhand on the ground that he had attained the age of 62 years before he was so appointed,

51 WP(C).No. 34408 of 2009 (S), Order dated 18.1.2010.
52 (2010) 3 SCC 402.

notwithstanding the authoritative pronouncement of the constitution bench of the Supreme Court in *Atlas Cycle Industries Ltd. Sonepat* v. *Their Workmen*[53] that an advocate-general for the state can be appointed after he/she attains the age of 62 years. The Supreme Court held that the petitioner ought to have known that the controversy which he had been raising in the PIL stood concluded half a century ago and should have refrained from filing such a frivolous petition, more so when the petitioner was a practicing advocate. The apex court found it unfortunate that even after such a clear enunciation of the legal position, a large number of similar petitions had been filed from time to time in various High Courts. The court observed that a degree of precision and purity in presentation was a *sine qua non* for a petition filed by a member of the bar under the label of PIL, and that it was expected from a member of the bar to at least carry out the basic research whether the point raised by him was *res integra* or not. The Supreme Court held that it was the bounden duty of the court to ensure that the controversy once settled by an authoritative judgment should not be reopened unless there were extraordinary reasons for doing so, and therefore, the High Court ought not to have entertained the PIL. The Supreme Court held that it was in no doubt that the PIL, which also had the potentiality of demeaning a very important constitutional office, had been filed for extraneous considerations and, therefore, dismissed the same with costs of rupees one lakh.

In *K. Susindran* v. *The Director of Elementary School*,[54] the Madras High Court found that the PIL seeking *mandamus* against the running of a particular school on the ground of non-compliance of conditions of approval and seeking the transfer of students studying in that school to any government school, was filed only to settle the scores between the petitioner and person running the school in order to oust him from the place where he was running the school. The High Court, after referring to the various judgements of the apex court disapproving the misuse of the process of PIL, dismissed the PIL with costs. In *Inderjeet* v. *State of U.P*,[55] the Allahabad High Court dismissed as misconceived the PIL seeking a writ commanding the state to start *de novo* consolidation proceedings from the stage of issuing notification under section 4 of the U.P. Consolidation of Holdings Act by the assistant consolidation officer, Lakhauwa, District Jaunpur, instead by the officer named in the PIL.

In *Soma Velandi* v. *Dr. Anthony Elangovan,*[56] the PIL was filed before the Madras High Court by a member of a scheduled caste community, claiming to be the managing director of a secret detective council private limited company and representing that he was rendering social service in all types of consumer protection matters, that he was working for protection of civil rights, human

53 1962 Supp. (3) SCR 89.
54 Writ Petition (MD)No.10297 of 2010, Order dated 21.9.2010.
55 PIL No. 2728 of 2010, Order dated 25.1.2010.
56 (2010) 3 L.W 555.

rights and ex-servicemen welfare and for en-couraging inter caste marriages. The PIL sought immediate action by the CBI on the petitioner's complaints against a private party for producing a false community certificate. The High Court dismissed the PIL, holding that not only was the genuineness of the Community certificate in question stood confirmed by a division bench of the court, the grievance of the petitioner related to service matters in which no PIL could be entertained. The High Court observed that PIL "has to be used as an effective weapon in the armoury of law for delivering social justice to the citizens' and that it is "depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants".

In *K. Parthasaradhi Reddy* v. *The Hon'ble Speaker, A.P. Legislative Assembly, Hyderabad,*[57] the Andhra Pradesh High Court declined to entertain the PIL filed by a lawyer who sought that the Speaker of the state legislative assembly should disclose the reasons for rejecting the resignations of MLAs protesting for separate Telangana in the State of Andhra Pradesh. Further reliefs sought in the PIL related to a declaration to the effect that the MLAs were not entitled to salary for the period their resignations remained under consideration before the Speaker, and to a direction to compel the Speaker to take a decision in respect of resignations he was seized of. The case of the petitioner was that there were wide spread allegations that due to the public agitations going on in different regions of the state, the MLAs intentionally submitted defective resignations, and that under the camouflage of resignations, the MLAs were deceiving and misleading the people with regard to their real intention. The High Court took the view that the petitioner had not been able to discharge the obligation cast upon him to show that he was acting *bona fide*, particularly in the absence of any pleadings as to how public interest was involved in the matter.

In *Ram Nath Mahato* v. *State of Jharkhand,*[58] the PIL alleged that no action was taken against a particular individual in a matter of defalcation of huge public money pertaining to the child development project. The Jharkhand High Court found that two officers were, on enquiry and scrutiny, found guilty and suspended. The misappropriated amount was recovered. The Jharkhand High Court dismissed the PIL as misconceived, more so when it was targeted against a single individual. In *Gopal Krishna Prasad* v. *State of Jharkhand,*[59] the Jharkhand High Court declined to entertain the PIL which sought closure of all pollution creating industries emitting hazardous gases. The High Court held that such a blanket order stopping running of all industries could not be passed without specifying the nature of hazardous substance being emitted

57 (2010) 4 ALT 75 (DB).
58 2010 (2) JLJR 79.
59 2010 (2) JLJR 49.

and illegality committed by the industries. In *Fasih Akhtar* v. *State of U.P.*,[60] the Allahabad High Court dismissed the PIL seeking safety precautions to be taken for a *mela* in terms of a notification which, according to the High Court, did not even *prima facie* apply to the facts of the case. In *Rashtriya Suchna Adhikar Task Force* v. *State of U.P*,[61] the grievance in the PIL before the Allahabad High Court was that the funds meant for use within the territorial jurisdiction of *nagar palika parishad*, Modi Nagar, had been spent in the territorial area of another *nagar palika parishad* or district. The High Court dismissed the PIL after finding from the material on record that the said areas were adjoining each other, and that the funds had been spent with the sanction of the *nagar palika parishad,* Modi Nagar for the purpose of repairing, renovation and beautification of cremation place and the public road, which were also used by the residents of the Modi Nagar *palika parishad*. In *Satya Sanatan Dharma Dharmatma* v. *State of U.P.*,[62] the Allahabad High Court declined to exercise its writ jurisdiction in the PIL seeking a writ of mandamus to impose total and complete ban on the printing, publication, distribution and circulation of a particular magazine for allegedly denouncing the existence and identity of Lord Ram and Lord Krishna, and insulting and damaging the faith and belief of their worshipers and followers within India and through out the world.

In *Welfare Society of Orissa* v. *Union of India*,[63] the PIL challenged the allotment of coal blocks in favour of particular power generating companies as being illegal, arbitrary and unreasonable. The Orissa High Court held that the allegation was not based on any valid grounds or evidence, and further that there was no public interest involved. The court observed that the state government could, under section 11 of the Electricity Supply Act, 2002, issue notification to the power generating companies to supply power to the corporation, which would supply the same to the consumers and, in that process, both the agricultural and industrial development would take place in the state. As a result, large number of farmers and industrial workers will be benefited and the *per capita* income of the people of the state will increase. Apart from the MOU and the supplementary agreement which were entered into in the present case, necessary permissions from the different departments like pollution control board, airport authority and other necessary organizations had already been obtained for establishment of the plant. Huge investment had already been made for the purpose of procuring the water, obtaining geological reports from CMPDI and GSI, bank guarantees and approval of mining plans for the establishment of the plant. The High Court found that the awarding of the contract in favour of the power generating

60 PIL No. 35485 of 2010, Order dated 2.7.2010.
61 PIL No. 39687 of 2010, Order dated 12.7.2010.
62 PIL No. 4280 of 2010, Order dated 29.1.2010.
63 AIR 2010 Ori. 183.

companies for establishment of plant was in public interest. Not only would it mitigate unemployment problem of the state but also mitigate the power generation problem as per the MOU entered into by the particular companies with the state government. The High Court was of the view that interference at this stage, by quashing the allotment, would actually cause injury to the public at large.

In *Shree Mahuva Bandhara Khetiwadi Pariyavaran Bachav Samiti* v. *Union of India*,[64] the PIL before the Gujarat High Court opposed the setting up of a cement plant with captive electricity generation near the water reservoir. The High Court dismissed the PIL, holding that such a project should not be stalled if substantial investment had already been made while simultaneously preserving the waterbody. In *All Sikkim Youth Association* v. *H.R. Subba,*[65] the PIL alleged departure from established norms and deviation in procedure in the PWD as also the roads and bridges department in Sikkim, and sought investigation by a competent agency into the alleged misappropriation of public funds. It transpired that the state and the inspection committee had, on thorough investigation of the matter, filed detailed affidavits before the State High Court. The Supreme Court, accordingly, declined to intervene in the matter. In *T.K. Sadasivan, Sinhu Bhavanam* v. *Karungappally Grama Panchayath*,[66] the PIL filed in the Kerala High Court challenged the proposed action of the state for conversion of the *gama panchayat* into the municipality. The petitioners were aggrieved of not getting any opportunity to place their objections/representations before such action was taken. In view of the notification issued by the government which, *inter alia*, called for suggestions/objections from the public as to the feasibility of conversion of the said *grama panchayat* into the municipality, the Kerala High Court disposed of the PIL opining that such notification addressed the grievance of the petitioners. In *Maulin J Barot* v. *State of Gujarat*,[67] the Gujarat High Court dismissed the PIL filed by an advocate that sought the quashing of the administrative decision by the state government of giving plots of land admeasuring 330 square meters in favour of MLA and MPs of different political parties at Gandhinagar at concessional rate. The High Court took the view that no public interest was involved. Moreover, the petitioner had not made a specific allegation of illegal allotment of plots of land in favour of one or other MLA or MP or any specific prayer.

X PIL AND ALTERNATIVE REMEDIES

In *Kunga Nima Lepcha* v. *State of Sikkim,*[68] the Supreme Court declined to entertain the PIL for a mandamus directing the CBI to investigate the

64 AIR 2010 (NOC) 952 (Guj.).
65 (2010) 12 SCC 694.
66 WP (C).No. 36466 of 2009(C), Order dated 12.1.2010.
67 Writ Petition (PIL) No. 5 of 2010, Order dated 14.12.2010.
68 (2010) 4 SCC 513.

allegations of misuse of public office by the incumbent chief minister of Sikkim. The Supreme Court held that writ courts were not the appropriate forum for seeking the initiation of investigation, and the alleged acts could easily come within the ambit of statutory offences such as those of 'possession of assets disproportionate to known sources of income' as well as 'criminal misconduct' under the Prevention of Corruption Act, 1988. The onus of launching an investigation into such matters was clearly on the investigating agencies such as the state police, CBI or the central vigilance commission, among others. The apex court held that it was not proper for it to give directions for initiating such an investigation under its writ jurisdiction. The court noted that in the past, writ jurisdiction had been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions had been given when a specific violation of fundamental rights was shown, which could be the consequence of apathy or partiality on part of investigating agencies. In some cases, judicial intervention by way of writ jurisdiction was warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court could play only a corrective role to ensure that the integrity of the investigation was not compromised. However, it was not viable for a writ court to order the initiation of an investigation. That function clearly lay in the domain of the executive and it was upto the investigating agencies themselves to decide whether the material produced before them provided a sufficient basis to launch an investigation. Further, there were provisions in the Code of Criminal Procedure, 1973 which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court was thus controlled by statutory provisions and it was not advisable for writ courts to interfere with criminal investigations in the absence of specific standards for the same. The Supreme Court was of the view that if it gave direction for prosecution in the present case, it would cause serious prejudice to the accused, as its direction might have far reaching persuasive effect on the court which may ultimately try the accused. The apex court observed that it was always open to the petitioners to approach the investigative agencies directly with the incriminating materials, and that it was for the investigative agencies to decide on the further course of action. It was only on the exhaustion of ordinary remedies that, perhaps, a proceeding could be brought before a writ court, and that, in any case, the High Court of Sikkim would be a more appropriate forum for examining the allegations made in the present PIL.

In *Voice of India* v. *Union of India*,[69] the PIL before the Supreme Court sought that water be supplied to every citizen in the country free of cost, as

69 Writ Petition (Civil) No. 263 of 2010, Order dated 20.9.2010.

the right to free drinking water was part of right to life under article 21 of the Constitution. The PIL further sought that the various state governments be directed to arrange for free drinking water through municipal corporations. The Supreme Court disposed off the PIL with a direction that the petitioner may move the concerned High Court with regard to its grievances since the subject matter of the writ petition was a state subject under the Constitution, and also because such grievance was confined to municipal areas. The Supreme Court did not agree with the petitioner's apprehension that the concerned High Courts would not look into such grievance, or would take several years for its redressal. The apex court opined that the reliefs sought were essentially against municipal corporations in each state which had the function to supply clean potable water, and that such local institutions cannot be monitored by the Supreme Court under article 32 of the Constitution.

In *Mankuzhy Nagar Resident's Association* v. *District Collector*,[70] the grievance of the petitioner in the PIL before the Kerala High Court was that the municipality was acting in excess of its powers under the Municipality Act by proposing to sell off two roads vested in the municipality. Such action, according to the petitioners, would affect the right of the public for free movement through those roads. The High Court declined to intervene in the matter, holding that the state legislation provided certain prescriptions on transfer of properties which were vested in the municipality, and in so far as such properties were concerned, there was a procedure prescribed for transfer under the Municipality Act and rules. The High Court, accordingly, held that if the petitioner was further aggrieved on that count or if they were aggrieved by any decision of the municipality, it may move either the government or the ombudsman for local self-government institutions, as the case may be, since the government was the appropriate authority to grant sanction to the municipality to deal with properties which were vested in the municipality

In *Forum for Sustainable Development* v. *Union of India*,[71] the PIL filed in the Andhra Pradesh High Court challenged the environmental clearance accorded by the ministry of environment and forests, New Delhi permitting the setting up of 2640 Megawatts (4 x 660 MW) thermal power project at village Srikakulam, District Kakarpalli, Andhra Pradesh, on the ground that the entire area earmarked for the project site was forest and swamp land, and that the thermal project would damage the ecology. The High Court held that a plain reading of counter of the state made it clear that clearance was granted by the state after due deliberation and application of mind, and that the clearance had already become subject matter of three appeals which were pending disposal before the national environment appellate authority – a forum which had the power to try, investigate and decide the controversy. The High Court refused to intervene in the matter, leaving the petitioners free to approach the appellate

70 WP (C).No. 20618 of 2007 (S), Order dated 11.2.2010.
71 *Supra* note 19.

authority, be it for impleadment in the pending appeals or by medium of a separate appeal.

In *Mahamana Malviya Foundation* v. *Vice Chancellor B.H.U. Varanasi*,[72] the PIL filed in the Allahabad High Court alleged that the person appointed by the executive council of Banaras Hindu University as the director of the institute of technology of the University was not a deserving person. The PIL sought a writ of certiorari quashing the appointment and a writ of mandamus commanding that the director of the institute be appointed on the basis of seniority. The High Court declined to entertain the PIL, holding that all the allegations made can effectively and appropriately be dealt with by the visitor of the University to whom the petitioner must approach. In *All India Kaimur Peoples Front* v. *State of U.P.*,[73] the PIL complained about unauthorized excavation of minerals from the reserved forest area and Kaimur wild life sanctuary in connivance with the local authorities, and sought an enquiry by the CBI or any other independent agency. The Allahabad High Court declined to entertain the PIL, requiring the petitioner to represent before the chief secretary of the state for the redressal of its grievance. In *Teju Sonkar* v. *State of U.P.,*[74] the Allahabad High Court required the petitioner, an elected corporator of Varanasi nagar nigam, to represent before the state government for redressal of his grievance in the PIL to the effect that an enquiry be conducted into the grant of illegal contracts by the municipal commissioner. In *Ram Pos* v. *State of U.P.,*[75] the PIL filed in the Allahabad High Court complained that a plot situated in village Mamolapur, Tehsil Chunar, District Mirzapur, had been shown as pond in the revenue records and the same had been encroached upon. The relief sought was the removal of such encroachment. The petitioner relied on the decision of the Supreme Court in *Hinch Lal Tiwari* v. *Kamla Devi,*[76] which dealt with the protection of public property in the shape of ponds from encroachment and their restoration. The High Court, however, held that the said decision did not allow for dispensation of the procedure prescribed in law to be adopted for removal of an encroachment or restoration of a pond. The High Court observed that mandamus cannot be issued to uproot even a trespasser without following the procedure prescribed by law, particularly when such PIL disclosed serious disputed question of fact. The High Court, accordingly, declined to entertain the PIL, leaving the petitioner to take appropriate remedy. A similar view was taken by the High Court in *Dr. Ravindra Nath Pandey* v. *State of U.P.,*[77] and in *Imtiyaz Ahamad* v. *State of U.P.*[78]

72 PIL No. 4461 of 2010, Order dated 29.1.2010.
73 PIL No. 3048 of 2010, Order dated 25.1.2010.
74 PIL No. 3280 of 2010, Order dated 25.1.2010.
75 PIL No. 3006 of 2010, Order dated 25.1.2010.
76 (2001) 6 SCC 496.
77 PIL No. 2898 of 2010, Order dated 25.1.2010.
78 PIL No. 4486 of 2010, Order dated 29.1.2010.

In *Jitendra Pal Singh* v. *State of U.P.,*[79] the grievance before the Allahabad High Court was that of encroachment upon public utility land which was in the shape of pond , despite the directions issued by the Sub Divisional Magistrate, Tehsil Puwayan, District Shahjahanpur, for removal of encroachment and submission of report to that effect. The High Court held that the encroachment, if any, upon public utility land had to be dealt with under section 122-B of the U.P. Zamindari Abolition and Land Reforms Act. The High Court, therefore, declined to entertain the PIL, while directing the petitioner to approach the competent authority. In *Jan Seva Sanstha* v. *State of U.P.,*[80] the PIL filed in the Allahabad High Court sought writ of mandamus to remove the encroachment from the public utility land, recorded as graveyard, chak road and irrigation channel in the revenue records. The court disposed off the petition directing the petitioner to represent before sub-divisional magistrate, Chandauli for the redressal of its grievance. In *Ramashrey* v. *State of U.P.,*[81] the Allahabad High Court disposed of the PIL complaining that the pasture land belonging to the village was being encroached upon and that no action was taken by the authorities despite representations by people, by requiring the petitioner to make a fresh application to the concerned authority. In *Vishambahr Singh* v. *State of U.P.*,[82] the PIL filed in the same court sought mandamus commanding the sub-divisional magistrate to demolish illegal construction and to take all necessary action with respect to encroachment and construction of a house by the *gram pradhan* in the area reserved for *harijan abadi*. The High Court declined to intervene in the matter, requiring the petitioners to represent before the district magistrate, Mahamayanagar for the redressal of their grievance. In *Rajpati Gautam* v. *State of U.P,*[83] the same court declined to entertain the PIL seeking a mandamus requiring the state to provide land for primary schools, Ambedkar park, play ground, hospital, community hall, graveyard, *chak* road and *nali* in village Shivapar for the use of the villagers, holding that such relief could effectively and appropriately be considered by the deputy director of consolidation, Jaunpur, before whom the representation was already pending.

In *Shree Yatri Seva Samiti* v. *Government of India*,[84] the Allahabad High Court dismissed the PIL seeking a mandamus to the state requiring it to make barricade between platform numbers 1 and 2 at raja ki mandi railway station. The High Court held that the petitioner should approach the appropriate authority of the railways for redressal of its grievance. In *Om Prakash* v. *State of U.P.,*[85] the Allahabad High Court dismissed the PIL seeking a mandamus to

79 PIL) No. 47694 of 2010, Order dated 11.8.2010.
80 PIL No. 792 of 2010, Order dated 11.1.2010.
81 PIL No. 40045 of 2010, Order dated 13.7.2010.
82 PIL No. 5886 of 2010, Order dated 4.2.2010.
83 PIL No. 2566 of 2010, Order dated 29.1.2010.
84 PIL No. 4374 of 2010, Order dated 29.1.2010.
85 PIL No. 5115 of 2010, Order dated 2.2.2010.

stop the closing of a link road connecting two villages, Asgarpur Jagir and Sultanpur within Tehsil Dadri in the District of Gautam Budh Nagar, requiring the petitioner to pursue his representation already pending before the district magistrate, Gautam Budh Nagar for the redressal of his grievance. In *Dhyan Singh Saini* v. *State of U.P.,*[86] the Allahabad High Court dismissed the PIL pertaining to the running of a large number of liquor shops in the city of Moradabad at places not permissible in law, while directing the petitioner to represent before the commissioner of excise, Uttar Pradesh for the redressal of his grievance. In *Yad Ram* v. *State of U.P,*[87] the grievance of the petitioner in the PIL before the Allahabad High Court was that the land recorded as *khalihan* in the revenue records had been transferred to individuals and, accordingly, sought that the state should not change the nature of the said land. The High Court disposed of the PIL, directing the petitioner to approach the district magistrate, Bareilly for the redressal of his grievance.

In *Mohd. Irfan Alam* v. *State of U.P.*,[88] the Allahabad High Court did not entertain the PIL complaining about the non-enforcement of the judicial order for the eviction of the private party which had assumed finality, and, instead, required the petitioner to approach the competent authority for appropriate orders. In *Gajendra Singh Yadavendu* v. *Union of India*,[89] the Allahabad High Court declined to entertain the PIL in view of the pendency of an appeal before the commissioner, Agra Division, Agra on the same issue where an *interim* order had been issued. In *Shila Devi* v. *State of U.P.*[90], the Allahabad High Court refused to entertain the PIL complaining of inaction on the part of district magistrate on the enquiry report submitted to him. In *Kailash Bihari Gaur* v. *State of U.P*,[91] the Allahabad High Court dismissed the PIL on the ground that the subject matter of the petition could be adjudicated by the civil court.

In *Nripendra Kumar Parimal* v. *State of Jharkhand,*[92] the PIL filed in the Jharkhand High Court alleged misuse of public fund for granting smart cards to the farmers. The High Court declined to entertain the PIL in view of the actions initiated by the state and the reference of the matter to the vigilance committee on cognizance being taken by the Governor. In *Smt. K.B. Ratnavalli* v. *Taluk Supply Officer, Chavakkad*,[93] the petitioner assailed in the PIL before the Kerala High Court an order passed by the civil supplies commissioner, notwithstanding a revision being pending by the private respondent before the state government. The High Court declined to entertain

86 PIL No. 3832 of 2010, Order dated 27.1.2010.
87 PIL No. 4841 of 2010, Order dated 1.2.2010.
88 PIL No. 42558 of 2010, Order dated 29.7.2010.
89 PIL No. 46031 of 2010, Order dated 5.8.2010.
90 PIL No. 4281 of 2010, Order dated 29.1.2010.
91 PIL No. 47177 of 2010, Order dated 10.8.2010.
92 2010 (2) JLJR 251.
93 WP (C).No. 2215 of 2010 (S), Order dated 9.2.2010.

the PIL, while directing the government to hear the petitioner also before final orders are passed on the revision.

XI CONCLUSION

The survey reveals that the Supreme Court and the High Courts have generally been proactive in reiterating the principles of PIL and encouraging genuine PIL actions. The courts have been equally vigilant in dismissing such matters which are clearly a misuse of the process. However, the insistence of some High Courts that the PIL be in the form prescribed by the High Court rules in that regard does seem futile, given the fact that court can entertain PIL even on the basis of letters, telegrams or telex to the court or act *suo motu*. Further, it is settled law that the proceedings under articles 32 and 226 of the Constitution have to be *appropriate* not with respect to the *form* of the proceedings, but having regard to the *purpose* of the proceedings, namely to protect the guaranteed fundamental rights. The remedial nature and purpose of PIL mandates that there be flexibility in requiring adherence to procedural law. It would be regrettable if, in the process of regulating PIL, the High Courts dilute such an important characteristic of PIL.

Further, the courts, by declining to intervene in some of the PIL actions on the ground of availability of an alternate remedy, also seem to have erred on the side of caution. Such approach raises the wider question as to the constitutional obligation on the Supreme Court and the High Courts to protect the guaranteed fundamental rights. The practice of the Supreme Court of not entertaining writ petitions filed under article 32 of the Constitution which can be disposed off by the High Courts under article 226 is traceable to two decisions of the Supreme Court in *Kanubhai Brahmbhatt* v. *State of Gujrat*[94] and *P.N. Kumar* v. *Municipal Corporation of Delhi*.[95] These division bench decisions are inconsistent with the constitution bench decision of the Supreme Court in *Kavalarappa Kottarathil Kochunni* v. *State of Madras*,[96] wherein the Supreme Court followed the full bench decision of the Supreme Court in *Romesh Thappar* v. *State of Madras*,[97] to hold that since the right to enforce fundamental rights is itself a fundamental right guaranteed by article 32, the Supreme Court could not refuse to entertain a petition under that article simply because the petitioner might have any other adequate, alternative legal remedy. Let us consider the issue from the standpoints of the litigants – after all, courts are made for the litigants and not the litigants for the courts. The litigant wants immediate, conclusive, inexpensive and effective relief for the infringement of the fundamental right and the Constitution *guarantees* such

94 AIR 1987 SC 1159.
95 (1988) 1 SCR 732.
96 AIR 1959 SC 725.
97 AIR 1950 SC 124.

relief directly from the Supreme Court.[98] It is, therefore, debatable whether the Supreme Court is justified in requiring the PIL petitioner to move the High Courts under article 226 of the Constitution to secure, for instance, the guaranteed fundamental right to potable water, instead of acting on the PIL filed under the guaranteed constitutional remedy of article 32. Surely the Supreme Court ought not to decline to discharge the constitutional obligation to ensure provision of such basic need to the citizens on the ground that the municipal corporations are statutorily bound to provide such potable water. It is precisely because the municipal corporations failed to discharge their statutory functions that the writ jurisdiction, which is more deeply entrenched in article 32 than in article 226, gets attracted. Indeed, the Supreme Court itself had entertained a PIL[99] under article 32 of the Constitution filed by the author way back in 1992 seeking the supply of potable water to the citizens. That PIL pertained to the painful existence of about 25 million people (including children) whose bodies had become twisted and crippled because, in the absence of potable drinking water, they had no option but to drink pungent groundwater water contaminated with fluoride. The apex court had intervened in the matter and issued directions to all states and union territories in the country.

As far as the High Courts are concerned, it is settled law that the writ jurisdiction can, and should, be exercised in such matters where the grievance of the petitioner relates to arbitrary state action or failure to discharge a statutory duty or to adhere to statutory provisions. High Courts, by requiring the PIL petitioners to represent before the authorities for the redressal of the grievances, overlook that the very rationale for permitting a public spirited person acting *pro bono* to move the High Court through a PIL action is to secure the fundamental and legal rights of those lacking access to the court on account of a disability. The PIL petitioner does so at the cost of his time, energy and money being spent for such proceeding. The inclination of the High Courts to simply direct the PIL petitioner to the authorities for such relief would certainly act as a dampener on PIL actions. It is imperative that such bottlenecks are removed at the earliest if the credibility and efficacy of PIL in providing substantive justice to the poor and the disabled is to be maintained.

98 For detailed critique, see Aman Hingorani, "Judicial Amnesia", XXVI *The Indian Advocate*, Part I, p. 28 (1994-96).

99 *Aman Hingorani* v. *Union of India*, Writ Petition (Civil) No. 436/1992.