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25
PUBLIC INTEREST LITIGATION

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I INTRODUCTION

THE SUPREME Court and the high courts have dealt extensively with public interest litigation (PIL) actions this year. The cases covered in the survey draw out the various features of the remedial jurisprudence of PIL, such as the relaxation of *locus standi* rule, epistolary jurisdiction of the courts, procedural flexibility, judicial review of administrative and policy matters, checking arbitrary state action, abstention from entertaining PIL in service matters and reiteration of mechanisms to check the misuse of PIL. While the courts have, in general, highlighted the desirability of PIL for enforcing the human rights of the disadvantaged sections of society, few of the high courts have sought to re-define the loose contours of PIL. These decisions are, to say the least, debatable. The survey also includes the notable PIL pertaining to public health, environment and principles of secularism.

II NATURE AND NORMS OF PIL

In *Narmada Bachao Andolan* v. *State of Madhya Pradesh*,[1] the PIL before the Madhya Pradesh High Court had sought a number of reliefs, including restraint on the eviction of the project affected families (PAFs); directions for providing life supplies such as drinking water and electricity; stopping the closure of the radial gates of the Omkareshwar dam above the crest level; and the blocking of the sluice gates below the crest level until all PAFs were rehabilitated as per the resettlement and rehabilitation policy. On appeal, the apex court found that the petitioner had not acted with a sense of responsibility in placing proper material before the high court or in making proper pleading. The PIL had given an impression that some drastic steps would be taken by the authorities which would cause great hardship to a large number of persons. However, the writ petition did not disclose the factum as to how many persons had already vacated their houses and handed over the possession of their land. The PIL had further contended that urgent measures were required to be taken by the court in order to mitigate the sufferings of the people, without placing any material in support thereof.

The Supreme Court in the background of such facts, recapitulated the principles underlying the PIL jurisprudence as follows:[2]

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1 AIR 2011 SC 1989.

2 *Id*. at 2030-31.

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PIL jurisdiction should be exercised cautiously in matters that primarily require the attention of the democratic process, or the State or those issues whose crevices and complexities the court may not easily unravel. The PIL jurisdiction should be exercised comparatively generously in cases involving public interest of sections of people for whom the administration of justice and its reach are not effective, and the rights delivery processes are shown to be weakened by power and influence.

The 'rights' of the public interest litigant in a PIL are always subordinate to the 'interests' of those for whose benefit the action is brought. The status of *dominus litis* could not be conferred unreflectively or for the asking, on a PIL petitioner as that would render the proceedings vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by persons for personal ends resulting in prejudice to the public weal.

Strict rules of pleading may not apply in PIL. However, there must be sufficient material in the petition on the basis of which court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. Information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks standard of accuracy and precision particularly when a legal wrong is caused to a determinate class.

A public policy cannot be challenged through PIL where the state government is competent to frame the policy or to change the policy. The public policy can only be challenged where it offends some constitutional or statutory provisions. The court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or more scientific or logical or wiser.

When such projects are undertaken and hundreds of crores of public money is spent, any individual or organisation in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law if the decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project.

The standard of expectation of civic responsibility required of a petitioner in a PIL is higher than that of an applicant who strives to realise personal ends. The courts expect a public interest litigant to discharge high standards of responsibility. The PIL will be rejected at the threshold if the PIL litigant acts for oblique motives. It is the responsibility of the court to measure the 'seriousness' of the PIL petitioner and to see whether she/he is actually a 'champion' of the cause of the individual or the group being represented. Where the petitioner's *bona fides* is in doubt but the cause of action is

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> genuinely in the general public interest, the court will relax the requirement of *bona fides* and appoint an *amicus curiae* to deal with the matter and keep the matter out of the power of the original petitioner. The court has to strike a balance between the interests of the parties, by taking into consideration the pitiable condition of weaker section of society, their poverty, inarticulateness, illiteracy, extent of backwardness and unawareness.

The Orissa High Court, in *Rabindra Kumar Bisoi* v. *State of Orissa,*[2a] examined the remedial nature and norms of PIL in a matter cancelling legal construction of mobile towers by Tata & IT Services Ltd. and Idea Cellular Ltd. on Bhoodan land, which was meant for poor and landless persons, in contravention of the Orissa Bhoodan and Gramadan Act, 1970. The high court summarized the principles underlying PIL as follows:

> The court, in exercise of powers under article 32 and article 226 of the Constitution, is constitutionally bound to entertain a petition filed by any member of the public in the welfare of people who are in a disadvantaged position and, thus, not in a position to knock the doors of the court.
> In PIL, the court may treat a letter or a telegram as a PIL upon relaxing procedural laws as also the law relating to pleadings.
> 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, the deprived, the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them.
> When the court is *prima facie* satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category, it would not allow the State or the Government from raising the question as to the maintainability of the petition.
> Whenever injustice is meted out to a large number of people, the court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

In *Pragati Mahila Mandal, Nanded* v. *Municipal Council, Nanded,*[3] the Supreme Court held that a PIL, which generally raises an issue of general public importance, should not be allowed to be withdrawn or dismissed on technical grounds, if cognizance thereof has already been taken by the court. While the courts entertaining PIL enjoy a degree of flexibility unknown to the trial of traditional court litigation, yet the procedure to be adopted by it should be known to the judicial tenets and it should adhere to the established principles of a judicial procedure employed in every judicial proceedings which constitute the basic infrastructure along whose channels flows the power of the court in the process of adjudication. It would, thus, clearly mean that the courts have to, in the normal course of business,

2a W.P. (c) No. 14732 of 2009, decided on 10.08.2011.
3 AIR 2011 SC 1512.

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follow traditional procedural law. However, minor deviations are permissible here and there in order to do complete justice between the parties. These observations came in wake of the issue as to the proper course of action on the death of the sole petitioner in a PIL, viz., whether the same would stand abated or can be allowed to be continued without bringing anyone else in place of the deceased petitioner. The Supreme Court held as soon as the information is received that a sole petitioner to PIL filed *pro bono publico*, is dead, the court can issue a notice through newspapers or electronic media inviting public spirited bodies or persons to file applications to take up the position of the petitioner. If such an application is filed, the court can examine the antecedents of the person so applying and find out whether allowing him to be impleaded as petitioner could meet the ends of justice. If the matter is already pending and the court is of the opinion that the relief sought could be granted in the PIL, without having to take recourse to adversarial style of proceedings, then it can proceed further as if it had taken *suo moto* cognizance of the matter. The court can still examine and explore the possibility, if any of the non-contesting respondents of the PIL could be transposed as petitioner as ultimately the relief would be granted to the said party only. The court can, in a suitable case, ask any lawyer or any other individual or an organisation to assist the court in place of the person who had earlier filed the petition. In cases where the main petitioner has passed away and any other person (not being a representative of the deceased) is brought on record, either from the opposite side or from a third party, the court may, after having received an application requesting for permission for the same, grant opportunity to the newly added petitioners to amend the petition, if they so desire.

In *Niraj Vikas Pabale* v. *Tahsildar, Wardha*,[4] the Bombay High Court entertained a letter written by fifteen persons as PIL which highlighted large scale illegal construction in collusion with the authorities. The high court, while referring to the remedial nature of PIL, noted that the rule of *locus-standi* has been diluted and the traditional meaning of 'aggrieved person' has been broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system. Indeed, it is an affirmation of participative justice in our democracy that people in large numbers seek remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations. In a PIL, it is not necessary for the court to abide by the strict rules of pleadings and even if it is found that the petitioners are busy bodies, the courts while discharging them, could proceed to deal with the PIL *suo motu*. Indeed, if high court feels that illegal/ unauthorized building activities are rampant, it may *suo motu* register a PIL and commence monitoring the same by issuing directions so as to curb such tendency and to fix liability and accountability. Further, there can not be any estoppel or acquiescence in such matters when the court finds that the cause presented to it as public cause and cognizance is taken in larger public interest. In such petitions, on the basis of pleadings that emerge in the case after notice to different parties, relief can be given or refused. Therefore, the court should not approach matters where public interest is involved in a technical or a narrow manner. The high court further

4 2011 (113) Bom LR 3530.

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held that it can treat letters, telegrams or postcards or news reports as writ petitions. However, the document petitioning the court for relief should be supported by satisfactory verification, more so where petitions are received by the court through the post. An unverified communication received through the post by the court may in fact have been employed *malafide*, as an instrument of coercion or blackmail or other oblique motive against a person named therein who holds a position of honour and respect in society. The PIL litigant must disclose his identity so as to enable the court to decide that the informant is not a wayfarer or officious intervener without any interest or concern. The court should be *prima facie* satisfied that the information laid before it is of such a nature that it calls for examination and this *prima facie* satisfaction may be derived from the credentials of the informant, namely, what is the character or standing of the informant or from the nature of the information given by him (i.e., whether it is vague and indefinite or contains specific allegations upon due investigation) or from the gravity or seriousness of the complaint set out in the information or from any other circumstance or circumstances appearing from the communication addressed to the court or to a Judge of the court on behalf of the court.

Emphasizing on the importance of PIL in India, the high court observed that the courts have, in a number of cases, given important directions and passed orders which have brought positive changes in the country. The courts directions have immensely benefited marginalized sections of the society, and have also helped in protection and preservation of ecology, environment, forests, marine life and wildlife. The court's directions to some extent have helped in maintaining probity and transparency in the public life. The high court sought to attribute the origin of PIL to the Supreme Court observing that the apex court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice" and it was therefore the apex court initiated PIL. The high court opined that PIL "is upshot and product" of the Supreme Court.

In *Surendra Ramlal Tiwari* v. *State of Maharashtra,*[5] the PIL filed in the Bombay High Court challenged the action of Nagpur Improvement Trust in allotting land reserved for primary school, secondary school and playground to an educational institution/trust. The high court allowed the PIL, while rejecting the contention that as the petitioners have not pleaded necessary details in the PIL. The high court emphasized that it is not necessary for courts in a PIL to abide by strict rules of pleadings and such litigation is inquisitorial in nature. Holding that in such petitions, relief can be given or refused on the basis of pleadings that emerge in the case after notice to different parties, the high court held that the court should not approach matters where public interest is involved in a technical or a narrow manner.

In *Ilaben Pathak* v. *State of Gujarat,*[6] the PIL filed in the Gujarat High Court portrayed the sorry state of affairs in matter of maintenance of public health, hygiene and sanitation by the Ahmedabad Municipal Corporation. Despite the fact that the

5 2012 (1) ALLMR 253, 2012(114) Bom LR 343.
6 W.P. (PIL) No. 122/2011, decided on 29.12.2011.

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high court had, in a *suo motu* proceeding initiated way back in the year 2006, issued various directions to the corporation in this regard, the authorities had paid no heed to the same, which led to people, especially children from the lower strata, dying like flies in few months on account of various diseases like dengue, malaria, jaundice and hepatitis-B.

In this PIL, the high court justified the mechanism of appointment of expert committees in PIL actions, holding that once a case of present nature comes up to the court, which relates to the conditions in the government run hospitals and concerns public health, hygiene and sanitation where crores of rupees of public funds are involved, it becomes the duty of the court to appoint a committee to go into the matter and to submit their report with the suggestions of remedial measures. While the court cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature, the court also cannot be the silent spectator and should, rather must, intervene in the PIL of this nature.

The high court further held that the adversarial procedure requiring evidence to be lead and treated by cross-examination, and the passive judicial role in terms of CPC and the Indian Evidence Act, have no application in PIL cases. The high court reasoned that the poor and the disadvantaged cannot possibly produce relevant material before the court in support of their case. Equally where an action is brought on their behalf by a citizen acting *pro bono publico*, it would be almost impossible for him to gather the relevant material and place it before the court. The court would be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene because the petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the court. It is for this reason that the court has evolved the practice of appointing commissioners for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The report of the commissioner would furnish *prima facie* evidence of the facts and data gathered by him. The court appoints a district magistrate, a district judge, a professor of law, a journalist, an officer in the court or an advocate practising in the court for the purpose of carrying out an enquiry or investigation and making a report to the court because the commissioner appointed must be a responsible person who enjoys the confidence of the court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the commissioner is received, copies of it would be supplied to the parties so that should either party wants to dispute any of the facts or data stated in the report, it may do so by filing an affidavit. The court can then consider the report of the commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the court to consider what weight to attach to the facts and data stated in the report of the commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the commissioner has no evidentiary value at all merely because the statements made in it are not tested by cross-examination. To accept this contention would be to introduce the adversarial procedure in a proceeding which in PIL is totally inapposite.

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In *Society for Promotion of Equality, Awareness and Rights (SPEAR)* v. *National Sports Club of India,*[7] the Bombay High Court dismissed the PIL filed by a NGO on the ground of laches. The PIL required the Municipal Corporation of Greater Mumbai and a contractor to demolish Sardar Vallabhbhai Patel Stadium situated at Worli, Mumbai and to restore the stadium to the public as it originally existed, apart from seeking a CBI investigation into the construction of the stadium. Noting that the petitioner filed the PIL seven years after daily large scale construction work going on at the site, the high court referred to the decisions of the apex court for the proposition that where by reason of delay and/ or laches on the part of the writ petitioners, the parties altered their positions and/or third parties interests have been created, PILs may be summarily dismissed. Delay although may not be the sole ground for dismissing a PIL in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, PILs are no exceptions. Just because a petition is termed as a PIL it does not mean that ordinary principles applicable to litigation will not apply, and laches is one of them.

In *Meghwal Samaj Shiksha Samiti* v. *Lakh Singh,*[8] the Supreme Court dismissed the challenge to the high court's order in the PIL which had set aside the allotment of a village pond, shown as *gair mumkin nada* in the revenue records, to Meghwal Samaj Shiksha Samiti for the purpose of construction of a students' hostel. The apex court rejected the contention that the PIL ought not to have been entertained in view of the pendency of a civil suit filed by the villagers on the same issue. The Supreme Court held that mere pendency of a suit by others would not affect the maintainability of the writ petition in public interest.

In *Joydeep Mukharjee* v. *State of West Bengal,*[9] the Supreme Court dismissed the PIL filed by a member of the All India Legal Aid Forum from West Bengal alleging unjustified use of discretionary powers by the Chief Minister of the state with regards to the allotment of plots in salt lake city, Kolkata. The court found that the matter regarding allotment of large number of plots in salt lake city, Kolkata had been the subject matter of different writ petitions and/or appeal before the Calcutta High Court as well as the apex court and as all these judgments have attained finality, they cannot be agitated over and over again including in the present PIL. The court observed that the principles of finality as well as fairness demand that there should be an end to the litigation and it was in the interest of public that the issues settled by the judgments of courts which have attained finality should not be permitted to be re-agitated all over again. The court further observed that its jurisdiction in a PIL cannot be pressed into service where the matters have already been completely and effectively adjudicated upon not only in the individual petitions but even in the writ petitions raising larger questions.

7 2012 (114) Bom LR 454.
8 2011(2) SCALE 654.
9 AIR 2011 SC 1169.

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III *SUO MOTU* PIL

In *Court on its Own Motion* v. *State of Jharkhand,*[10] the Jharkhand High Court considered the reports submitted by the state for taking action against the encroachment in the river bed area of river "Swarnrekha". The high court stated that it was shocked to learn that one industrial unit, namely, M/s. Tata Steel Company, had been dumping slag in the river for years, as a result the bed width of the river had already narrowed. The pollution control board took the stand that the dumping of slag by the said company does not cause water pollution due to poor leach ability of the slag and marginally high concentration of alkalinity, lead and aluminum. The high court held even if such dumping of slag did not constitute pollution, it was a clear encroachment over the part of the river by putting it to the use of the company. Reasoning that no one has right to stop or obstruct the flow of the natural stream of the rivers, the high court treated the contention of the state that the said company has undertaken some good work for the public benefit to be an irrelevant consideration.

In *Court on its Own Motion* v. *State of Jharkhand,*[11] the Jharkhand High Court found that about 34,000 bungalows or quarters of four PSUs have been unauthorizedly occupied and more than thousands crores of rupees had already been spent to provide electricity and water to the unauthorized occupants which included politicians, bureaucrats, police officials, doctors etc. The high court directed all the four PSUs to publish the list of these occupants with details of the quarters given by the CBI in two daily newspapers, circulated in the State of Jharkhand at the cost of respective PSUs with details of property which these persons have occupied. The list was to contain the heading that as per the CBI report, following are the unauthorized occupants over the quarters or bungalows or land of the PSUs. A copy of this list was directed to be sent to the Secretary, Government of India, Ministry of Heavy Industries, the Secretary, Government of India, Ministry of Coal, the Secretary, Government of India, Ministry of Steel, so that the matter may be considered by the Union of India itself at its own level.

In *Court on its Own Motion* v. *State of Jharkhand,*[12] the Jharkhand High Court took *suo motu* cognizance of serious irregularities being committed by the Ranchi Regional Development Authorities and Ranchi Municipal Corporation in the matter of unauthorized constructions. The high court passed detailed directions, emphasing that encroachments on the premises of the PSUs, which drew upon tax payers' money, violated public and national interest.

In *Court on its Own Motion* v. *State of Punjab,*[13] the Punjab and Haryana High Court took *suo motu* notice of a news item alleging non-payment of wages to the prisoners who are lodged in different jails in the States of Punjab and Haryana. It appeared that even the nominal remuneration had not been disbursed to the jail inmates, who had helped in the production/manufacture of various items which

10 W.P. (PIL) No. 1325 of 2011, decided on 21.06.2011.
11 W.P. (PIL) No. 1076 and 1783 of 2011, decided on 27.07.2011.
12 W.P. (PIL) No. 1325 of 2011, decided on 21.06.2011.
13 CWP No. 7499 of 2010, decided on 14.03.2011.

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were eventually sold in the market. The high court directed immediate disbursement of such dues.

The Delhi High Court, in *Court on its Own Motion* v. *Directorate of Education, GNCT of Delhi*,[14] initiated the PIL *suo motu* on the basis of a letter addressed to the court, bringing to its notice the lack of security and absence of medical facilities in the government schools in Delhi. The incident in this PIL pertained to a school girl in a government school who was hurt in her right eye in the school because someone from outside the wall of the school threw a stone which hit her eye. Due to the callous attitude and lack of medical assistance by the school authorities, the student suffered a substantial loss of vision. Keeping in view the liability of the state and the agony suffered by the student, the court directed the state to pay sum of Rs. 30,000/- as *ex-gratia* to the student. The court further issued directions to the effect that the state government shall depute two home guards in each government girls' school situated within the territory of Delhi. The guards would remain in their dress and it will be their duty to see that no untoward incident occurs. If for some reason home guards cannot be deputed in a school, the director of education shall instruct the principal of the school to depute adequate number of guards at the time of ingress and egress during the school hours of the students. The school authorities were also directed to create a small cell headed by a teacher, who on coming to know about such a situation, shall immediately take the student to the hospital for availing medical treatment.

In *Court on its Own Motion* v. *State of Punjab,*[15] the Punjab and Haryana High Court registered a PIL on the basis of a telegram addressed to the Chief Justice by one Jaswinder Singh. In the said telegram it was alleged that the police had not recorded the statements of Jaswinder Singh and other persons in connection with the investigation of a FIR, which was found to be factually incorrect. The aforesaid Jaswinder Singh filed an affidavit to the effect that the telegram attributed to him has not been sent by him. The high court accordingly closed the PIL.

In *Suo Motu Proceedings* v. *Managing Director*, *Travancore Devaswom Board*[16] the Kerala High Court took cognizance of an anonymous letter addressed to the court complaining about the pollution River Pumba. It transpired that the question raised in the instant case had been already considered in two previous writ proceedings. The high court, while dismissing the writ petition, reiterated that such PIL was yet another example as to why anonymous petitions are not to be normally entertained as PIL.

In Re: The Chief Election Commissioner, New Delhi,[17] the single judge Madras High Court took *suo motu* cognizance of the news item published in the newspaper, wherein certain statements had been made by the Chief Minister of Tamil Nadu alleging excessive restrictions imposed by the election commission. The bench presided over by the chief justice of the high court disapproved the exercise of such jurisdiction by the single judge and observed that while exercising *suo motu* power

14 180(2001) DLT 160 or W.P. (C) 1776/2011, decided on 04.05.2011.
15 CWP No. 416 of 2011, decided on 25.02.2011.
16 WP (C).No. 17542 of 2011(S), decided on 8.07.2011.
17 AIR 2011 Mad 103.

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in relation to PIL, self-restraint and judicious exercise is expected to be borne in mind. The court further observed that it would be appreciated that as and when any matter of public importance is sought to be brought to the notice of the court, a reference may be made to the chief justice for initiation of action and after such reference is made by any judge to the chief justice he will examine the matter according to the guidelines formulated by the Supreme Court and after the matter is examined, the same can be placed before the appropriate bench in accordance with the directive issued in that regard by the chief justice for further necessary action. It would not be proper that as and when any news item is published in the newspaper, the court will take notice of such news item and treat the same as writ petition *suo motu* in public interest without referring the matter to the chief justice.

In *Niraj Vikas Pabale* v. *Tahsildar, Wardha,*[18] the Bombay High Court emphasized that in case an application was filed and the bench came to the conclusion that it involved some issues relating to public interest, the bench should not entertain it as a PIL, but that bench had the option to convert it into a PIL and ask the registry to place it before a bench which had jurisdiction to entertain the PIL as per the rules, guidelines or by the roster fixed by the chief justice. However, the bench before which an application was filed could not itself proceed with the matter treating it to be a PIL. The high court further held that taking cognizance of PIL was mostly an administrative exercise and it was not necessary to hear the alleged wrong doer at that stage. Such aggrieved person could always make suitable grievance when matter was being judicially examined by the regular bench. The law did not contemplate a hearing before taking cognizance as PIL and further challenges to the orders taking cognizance of either the chief justice or the senior judge by the aggrieved party.

In *Saurashtra Chemicals Limited* v. *State of Gujarat,*[19] the division bench of the Gujarat High Court allowed the appeal against the order of a single judge of that high court on the short ground that when the writ petitioner prayed for a direction to prohibit mining within one km radius from the boundary of the sanctuary/national park/conservation reserve, the nature of the prayer was one in public interest and ought to have been decided by the division bench of the high court hearing PIL matters. Since the single judge had no jurisdiction to decide such issue while sitting as a single judge, the writ petition was directed to be listed before the appropriate division bench hearing PIL matters.

IV RELAXATION OF THE RULE OF *LOCUS STANDI*

In *Zafruddin Khan* v. *Aligarh Muslim University,*[20] the Supreme Court allowed the appeal filed against the order of the Allahabad High Court which had dismissed the PIL filed by the appellant on the ground of *locus standi*. The PIL sought a declaration that the decision of the Aligarh Muslim University to establish special campus centres across India was illegal, and for a direction to the said university

18 *Supra* note 4.
19 LPA No. 645 of 2011, decided on 15.04.2011.
20 2011(2) SCALE 635.

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not to establish a campus at Chelemala at Perinthalmanna Mallapuram, Kerala. The high court was of the view that only a member of the university senate or university academic council or university court could file a writ petition for the relief sought, and dismissed the PIL as being not maintainable. The Supreme Court noted that the appellant was a former student and elected member of Aligarh Muslim University Court and was also a donor life member. The apex court held that the appellant, therefore, had sufficient interest to file the PIL and could not have been non-suited on the ground of *locus standi*. Accordingly, the court directed restoration of the PIL filed in the high court, without expressing any opinion on the merits of the case.

In *Sanjay Dinanath Tiwari* v. *Director General of Police (Anti-corruption),*[21] the Bombay High Court upheld the *locus standi* of an RTI activist to file a PIL seeking independent investigation against the President of the Mumbai Pradesh Congress Committee, who had huge properties and assets disproportionate to his known sources of income, as also properties in the names of members of his family who had no known sources of income. The said president was a senior politician, had held the post of a minister in the State of Maharashtra and was a member of the Maharashtra Legislative Assembly. The court observed that when allegations of serious financial irregularities and corruption are made against persons holding public office, it would be in public interest to look into them, even if it is assumed that there were some political undercurrents in the petition. Indeed, an inquiry should not be shut down at the threshold because a political opponent with a political difference raises an allegation of commission of an offence.

In *Ramkumar Patel* v. *Madhya Pradesh Pashu Chikitsa,*[22] the Madhya Pradesh High Court dismissed *in limine* the PIL filed by an advocate impugning the notification dated 04.07.2011 arbitrarily increasing the fee of the students of 2nd, 3rd, 4th, 5th years of bachelor of veterinary science and animal husbandry. The high court held that it was a settled position that writ petition can be entertained as public interest litigation by any interested person in the welfare of the people who are in a disadvantageous position and not in a position to knock the doors of the court. The petitioner lacked *locus standi* to file the PIL as the issue could be raised by either the students or their guardian.

In *Dravida Munnetra Kazhagam (D.M.K.)* v. *State of Tamil Nadu,*[23] three PILs were filed before the Madras High Court, one by the DMK political party and two by practicing advocates. The grievance in the PILs was that it was with a view to wreak vengeance against opponents of the ruling party that the government had issued a notification to investigate land grabbing cases for the period from 2006 to 2011, i.e., during that period the petitioner party was in power in the State of Tamil Nadu. The state denied the contention that it was targeting any regime, while submitting that the special cell and special courts had been constituted for speedy investigation and disposal of land grabbing cases. The individuals affected, if any, had having several remedies, and therefore the writ petition filed by the DMK,

21 PIL Writ Petition No. 51 or 2010, decided on 22.02.2012.
22 2011 LawSuit (MP) 284, Writ Petition No. 11497/2011.
23 Writ Petition No. 20805 of 2011, decided on 30.09.2011.

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which is a political party, in the guise of PIL be dismissed at the threshold. The high court dismissed the PIL filed by the DMK party, holding that it revolves around the interest of the petitioner, namely, a political party, and that has no element of public interest. However, the high court admitted the two PILs filed by practising advocates, who had raised legal contentions. Holding that the advocates had no political affiliations, the high court observed that the *locus standi* of the advocates cannot be doubted.

V PROCEDURAL LAW

In *Niranjan Tripathy* v. *State of Orissa,*[24] the PIL before the Orissa High Court by a practicing advocate relied upon press reports to state that Cuttack Development Authority (CDA) and Bhubaneswar Development Authority (BDA) arbitrarily allotted plots from the chairman's discretionary quota in prime localities to the sitting judges and former judges of the high court and former judges of the Supreme Court as also IAS, IPS and IFS Officers. It was specifically alleged that the authorities, namely, BDA and CDA have indiscriminately distributed plots amongst the rich and influential persons, that this practice had been adopted since 2000 by the then Minister in-charge of the Ministry of Urban Land Development Department, Orissa, who in order to legalize his own craze for land, willfully allotted plots to the judges of the court, particularly when an important PIL bearing OJC No.6721 of 1992 was being heard by the judges of the court. It was further alleged that no sooner the judges of the court had been benefited with such allotment of plots, the bureaucrats and high police officials and so also politicians indiscriminately hijacked the benefits in the guise of the discretionary quota by the use of their respective powers and positions, and made the development authorities thereby deficient of vacant lands for allotment to the applicants waiting for years together. The PIL *inter alia* sought an inquiry by the CBI to trace out the truth regarding allotment of plots out of discretionary quota. On query from the high court as to whether the petition was in conformity with the Orissa High Court Public Interest Litigation Rules, 2010, the petitioner sought leave to withdraw the PIL with liberty to file a fresh writ petition in the form of a PIL in accordance with the said rules.

The high court referred to the rules, and in particular to rule 7 which provided that if the petition is based on news report, it must be stated as to whether the petitioner has verified the truth of the facts by personally visiting the place or by talking to the people concerned or has verified from the reporter or editor of the news paper concerned. The high court further referred to rule 8 which provided that before filing a PIL, the petitioner must send a representation to the authorities concerned for taking remedial action, akin to what is postulated in section 80, CPC. Details of such representation and reply, if any, from the authority concerned along with copies thereof must be filed with the petition. According to the high court, the petition in the instant case was not maintainable due to non-compliance of the mandatory rules prescribed by the court for filing PIL. The high court further held that the averments made against the allottees had not been properly verified as

24 2011Lawsuit (Ori) 157. W.P.(C) No. 26393 of 2011, decided on 08.12.2011.

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required under law, and in particular, order 6 rule 15 read with order 19 rules 1 and 3, CPC. The high court also invoked laches to dismiss the PIL, holding that it appeared that some allotments were made during the years 2000 to 2007 which have by now become four to eleven years old. Therefore, by this time the rights of the allottees had been settled. The principle of delay defeats equity will come on the way in exercising the equitable and discretionary relief in this particular litigation.

The Gujarat High Court in *Kantibhai Vithaldas Patel* v. *State of Gujarat,*[25] declined to entertain the PIL as the same was not in accordance with the Public Interest Litigation Rules, 2010. The high court permitted the petitioner to withdraw PIL and to file a fresh PIL as per procedure.

VI ADMINISTRATIVE AND POLICY MATTERS

In *Centre for PIL* v. *Union of India,*[26] the Supreme Court allowed the two writ petitions challenging the legality of the appointment of P. J. Thomas as central vigilance commissioner on the basis of the recommendation of the high powered committee (HPC) constituted under the proviso to section 4(1) of the Central Vigilance Commission Act, 2003. The apex court reiterated the settled position that though the government was not accountable to the courts in respect of policy decisions, it was accountable for the legality of such decisions. If a duty was cast under the proviso to section 4(1) of the said Act on the HPC to recommend to the President the name of the selected candidate, the integrity of that decision making process had to ensure that the powers were exercised for the purposes and in the manner envisaged by the said Act, otherwise such recommendation will have no existence in the eye of law. In the present case, apart from the pending criminal proceedings, various notings of department of personal and training recommended disciplinary proceedings against P. J. Thomas in respect of the *Palmolein* case had not been considered by the HPC. The apex court, while disposing of the petition passed the several directions, including the following:[26a]

> In cases of difference of opinion amongst the members of the HPC, the dissenting member of the committee should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent as to bring fairness-in-action. All the civil servants and other persons empanelled should be outstanding civil servants or persons of impeccable integrity. The empanelment should be carried out on the basis of rational criteria, which would have to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority. The empanelment should be carried out by a person not below the rank of Secretary to the Government of India in the concerned Ministry. The empanelling authority, while forwarding the names of the empanelled officers/persons, would enclose complete information, material and data

25 W.P (PIL) No. 75 of 2011, decided on 20.06.2011.
26 2011(3) SCALE 148.
26a *Id.* at 175-176.

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of the concerned officer/person, whether favourable or adverse. Nothing relevant or material should be withheld from the selection committee. The selection committee should adopt a fair and transparent process of consideration of the empanelled officers.

In *Salil Sabhlok* v. *Union of India,*[27] the Punjab and Haryana High Court entertained the PIL challenging the appointment of Chairman of the Punjab Public Service Commission, holding that that though the chairman and members of the commission have to be men of caliber, integrity and stature, there was no office memorandum or internal guidelines as to how a chairman or members was to be appointed. The high court further held that the chairman or the members of the commission were not persons holding civil posts governed by the service jurisprudence, but were required to be dealt with keeping in view the expectations and nature of duties assigned to them by the Constitution. Thus, the PIL, not being a PIL in a 'service matter' so called, but a PIL in relation to the matter of appointment to constitutional post, was maintainable. The high court, reasoning that it could exercise writ jurisdiction to pass such orders as may be necessary to give effect to the fundamental rights, held that it could issue directions of judicial review with a view to maintain transparency and probity in the administration and to restore institutional credibility. Such directions are issued on the touchstone of article 14 of the Constitution so that there should not be any arbitrariness or discrimination. All actions of the administrative authorities, including the recommendations of appointment of chairman and members of the commission, have to be on the basis of transparent, objective criteria which must exclude vice of arbitrariness and *mala-fides*. Such exercise of power by the high court does not wrest power nor breach the delicate constitutional balance of separation of powers.

The high court further held the power of judicial review would be different in nature and scope than the power of judicial review in respect of the administrative orders in relation to the officers and official of the state government. In respect of the post of chairman and members of the commission, the power of judicial review extends to the decision making process. The decision making process should show objectivity and transparency in selecting a suitable candidate to discharge the constitutional obligations. The commission is entrusted with the task of making selections to all the civil posts in the state. The candidates in such selection process are entitled to be treated fairly, equitably and in transparent manner. The commission cannot conduct selection process in arbitrary, capricious and *mala-fide* manner. The high court held in the present PIL that since the decision making process was not transparent or objective and since no effort has been made to choose the best possible talent to discharge the constitutional functions, the appointment of chairman of the Commission had to be set aside. The high court directed that till such time a fair, rational, objective and transparent policy/ norms to meet the mandate of article 14 of the Constitution are made, the state shall follow the following procedure as part of the decision making process for appointments as members, and chairman of the public service commission:

27 Civil Writ Petition No.11846 of 2011, decided on 17.08.2011.

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There shall be a search committee constituted under the chairmanship of the chief secretary of the respective state governments.
The search committee shall consist of at least three members. One of the members shall be serving principal secretary, i.e., not below the rank of financial commissioner and the third member can be serving or retired bureaucrat not below the rank of financial commissioner, or member of the armed forces not below the rank of brigadier or of equivalent rank.
The search committee shall consider all the names which came to its notice or are forwarded by any person or by any aspirant. The search committee shall prepare panel of suitable candidates equal to the three times the number of vacancies.
While preparation of the panel, it shall be specifically elicited about the pendency of any court litigation, civil or criminal, conviction or otherwise in a criminal court or civil court decree or any other proceedings that may have a bearing on the integrity and character of the candidates.
Such panel prepared by the Search Committee shall be considered by a high powered committee consisting of the Chief Minister, Speaker of Assembly and leader of opposition.
It is, thereafter, the recommendation shall be placed with all relevant materials with relative merits of the candidates for the approval of the Hon'ble Governor after completing the procedure before such approval.

In *State of Jharkhand* v. *Pakur Jagran Manch,*[28] the question before the Supreme Court was whether the state government could de-reserve land earmarked as gochar, which was meant for grazing of cattle, and thereafter release the gochar to the health department for construction of a hospital. Pursuant to the directions passed by the Jharkhand High Court in a PIL, a gochar was identified as being suitable for construction of the hospital with the consent of the village community for effective implementation of national leprosy eradication programme and for improving the standards of health of the tribal residents of the area. When the construction commenced, another PIL was filed in the Jharkhand High Court *inter alia,* contending that the grazing land (gochar) could not be used for any other purpose and seeking prohibition of construction of a hospital in the said gochar. The Jharkhand High Court allowed this PIL. On appeal, the Supreme Court set aside the order of the high court, while construing the relevant statute as containing no prohibition for such de-reservation of gochar land and subsequent change of use. The apex court, however, cautioned that such de-reservation of any government land reserved as gochar should only be in exceptional circumstances and for valid reasons, having regard to the importance of gochar in every village. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar. The court further directed that any attempt by either the villagers or others to encroach upon or illegally convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with.

28 (2011) 2 SCC 591.

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In *Rajinder Nagar Welfare Association* v. *Delhi Water Board,*[29] the PIL before the Delhi High Court alleged that the Delhi Jal Board had not performed its statutory duty of installing water meters and sought that a writ of mandamus be issued commanding the board to install the water meter of ISI/ISO standard to the respective water consumers forthwith within the National Capital Territory of Delhi and to stock water and avoid any shortage of water meters in future. The high court opined that the question that emanated for consideration was whether it was the board or the citizens who were under the obligation to install water meter. Further, whether the citizens, while consuming water, could choose not to pay the charges as per actual consumption due to non installation of meters. The high court construed the provisions of the Delhi Water Board Act, 1998 to hold that it was permissible for the board to, instead of installing water meters, require the consumers to install the same so that the charges of water consumption can be raised against the water connection on the basis of actual consumption.

In *Hari Singh Nagra, Advocate* v. *Union of India,*[30] an advocate filed the PIL seeking a direction to the Union of India to expedite the evacuation of the stranded Indian citizens from Libya due to disturbance/lawlessness in the said country. The Punjab and Haryana High Court observed that although judicial notice can be taken of the fact that Government of India had started a process of evacuating its citizens, the court should not enter into such area or pass any orders in that regard. The high court declined to entertain the PIL on the ground that the matter pertained to an area where the executive must be left free to decide as to how the said process was to be executed or implemented.

In *Mohammed Iqbal* v. *State of Madhya Pradesh,*[31] the challenge before the Madhya Pradesh High Court was the change in excise policy/arrangement for the year 2011-12, whereby the State government had adopted a new eligibility criterion for granting licence to supply spirit from bonded warehouses to retail sale contractors. The high court held that the scope of judicial review in the matter of policy decision being limited and permissible only to cases where it is found to be capricious, arbitrary or against the statutory provisions or suffers from the vice of discrimination or is unconstitutional, which is not the case here. Accordingly, the high Court found that no interference was warranted in the PIL.

In *Rajesh P Mankad* v. *State of Gujarat,*[32] the PIL alleged that the arrest, detention and deportation of Bangladeshis near Chandola lake was without sanction of law and in violation of article 21 of the Constitution. The PIL sought adequate compensation for the hardships suffered by such persons and a direction prohibiting the authorities from arresting, detaining or deporting any other persons from Shiyasatnagar or any other part of the State of Gujarat without following the procedure prescribed under the Foreigners Act, 1948 read with the Foreigners (Tribunals) Order, 1964. In the background regarding the concern of the Government of India about illegal migration of Bangladeshi nationals into India, the Gujarat

29 W.P.(C) No.5918/2010, decided on 09.02.2011
30 CWP No. 4598 of 2011, decided on 15.03.2011.
31 2011(2) JLJ 163, Writ Petition No.1510/ 2011, decided on 03.02.2011.
32 Civil Application No.487 of 2010, decided on 22.04.2011

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High Court, dismissed the PIL while observing that if in terms of the procedure prescribed by the central government, the Bangladeshi nationals are detected and deported, the petitioner cannot raise any objection. Moreso, when such detection, detention and deportation of such illegal migrants from Bangladesh were in the public interest of Indian citizens.

In *Unknown* v. *State of Jharkhand,*[33] the PIL filed before the Jharkhand High Court sought directions for the State to adopt the scheme/ action plan framed by the National Commission for Protection of Child Rights with necessary and appropriate modifications as applicable to the State of Jharkhand and to constitute a State Commission for Protection of Child Rights as per the provisions contained in the Commission for Protection of Child Rights Act, 2005 and to constitute Child Welfare Committees, children's homes, shelter homes and to implement the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2000. The high court, after referring to the enactments for protection of the rights of children, held that it was the State's duty to implement the laws, and required the State to place on record the steps taken in this regard.

In *Ajay Prasad Uniyal* v. *State of Uttarakhand,*[34] a PIL prayed for the quashing of the increase in the fare rate of ropeways within the municipal limits of Mussoorrie. The Uttaranchal High Court, while dismissing the PIL, observed that the increase in fare appeared to be as per the resolution of the municipal board, passed under the applicable rules. As such, such increase in the fare could not amount to violation of any right or fundamental right of any citizen.

In *K. Manivannan* v. *Election Commission of India,*[35] the Madras High Court construed article 324 of the Constitution to reiterate that the powers of the election commission of superintendence, direction and control in conducting the elections included within its ambit all incidental powers. The high court, accordingly, issued specific directions to the election commission on how it should exercise such powers to ensure free and fair elections to the legislative assembly in the State of Tamil Nadu that were to be held in April, 2011.

In *Abhinav Modi* v. *State of Bihar,*[36] the PIL before the Patna High Court challenged the decision of the Aligarh Muslim University and the State of Bihar to open a centre of Aligarh Muslim University in Bihar. The Patna High Court took the view that the location of a university or an educational institution depends upon the policy of the state government and of the university and in such matters, the court should not intervene unless it could be demonstrated that impugned policy violates any constitutional provision.

In *Bhalaswa Lok Shakti Manch* v. *GNCT of Delhi,*[37] the Delhi High Court entertained the PIL pertaining to the working of the rationing system in a particular locality and directed the concerned department shall do the study in the locality in question with regard to the issuance of ration cards within a period of six weeks.

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33 W.P (PIL) No. 139 of 2011, decided on 16.08.2011.
34 W.P No.61 of 2011 (PIL) decided on 30.09.2011.
35 2011 (3) CTC 785, Writ Petition No. 8103 of 2011, decided on 01.04.2011.
36 AIR 2011 Pat 171.
37 W.P(C) 2309/2011, decided on 06.04.2011.

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Persons, who were residents of the locality and eligible to get the ration cards and had not been provided the same, were directed to approach the authority, which, after verifying the documents and their eligibility, would issue the ration cards to them. The high court directed that there should be adequate availability of ration in the locality keeping in view the population. The ration card of any person found ineligible to have one was to be cancelled after following the due process of law.

In *Dhawandeep Residents Welfare Association* v. *Union of India,*[38] the grievance of the petitioner association before the Delhi High Court was that the New Delhi Municipal Council (NDMC) and the commissioner of police had failed to ensure that the residents of Dhawandeep Building were not obstructed or prevented from using the road and allowed ingress and egress to and from their building. The said authorities were said to have failed to ensure cleanliness as processions and *dharnas* were held almost throughout the year and the streets were littered and there was stagnant water and constant sloganeering. Some protesters had even put up tents/ temporary shelters. These protesters bathe, slept and cooked near the building for months together creating unhygienic conditions. The PIL sought a mandamus commanding the authorities to permanently remove the protestors, their vehicles and tents from Jantar Mantar road along with all their belongings and to permanently ban holding dharnas/ processions on Jantar Mantar road. The court observed that while the demonstrators had the right to protest/demonstrate and voice their opinion within reasonable limits, they could not disturb and violate the rights of third parties or hold the public at ransom. The court directed that it shall be the duty of the local authorities including NDMC to ensure that area/streets in the area were cleaned and any litter left behind was removed periodically every day. NDMC was further directed to explore the possibility of cleaning the streets at night or late in the evening or early morning. Adequate toilet facilities were directed to be provided.

In *Francis Manjooran* v. *State of Kerala,*[39] the challenge before the Kerala High Court was with regard to the shifting of village office from the present location to another place for the purpose of construction of bus terminal. The high court declined to interfere with the proposal for construction of bus terminal and approach roads thereto, terming the same to be public purposes.

In *Ajimon Gangagadharan (Ajith)* v. *State of Kerala*,[40] the petitioner sought appropriate direction to the State of Kerala and its agencies to propagate the local language malayalam in their all communications and to exhibit all advertisements and other boards in malayalam. The state, in response, contended that it was actively promoting malayalam being the local language and had appointed a commission to recommend on the change in the curriculum and, if necessary, to introduce malayalam as a compulsory language up to some level of education in all schools in Kerala. The Kerala High Court sought to balance the needs of persons visiting Kerala and not knowing malayam, with the prescription of malayam in school curricula so that the young generation was at least able to read and write the language. The high court directed that all sign boards on road, in hotels and all shops and commercial

38 W.P(C) No. 2680/2011, decided on 31.05. 2011.
39 W.P.(C) No. 3526 of 2011, decided on 02.02.2011.
40 W.P.(C) No. 2420 of 2011, decided on 09.02.2011.

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establishments, government offices, hospitals and buses, be written in english along with malayalam version of the same.

In *Pathan Mohmadkhan Aliyarkhan* v. *State of Gujarat,*[41] the PIL in the Gujarat High Court had been preferred by hutment dwellers living on the Sabarmati river front at Ahmedabad town for a declaration that the action of the authorities in preparing, executing and taking any action in pursuance of the Sabarmati River Front Development Project, without and before completing satisfactorily the just and fair scheme of resettlement and rehabilitation of all project affected people living therein, was arbitrary, irrational, unreasonable and unjustified. A further prayer was made to restrain the authorities from evicting the project affected people actually living on the banks of Sabarmati, and not to demolish their houses or forcibly remove them to other places. The Ahmedabad Municipal Corporation, however, pleaded that it had framed resettlement and rehabilitation scheme for the Sabarmati river front slum dwellers of Ahmedabad. The high court, by way of an interim order, *inter-alia*, directed the Ahmedabad Municipal Corporation to allot residential units to the PAFs as per the list submitted in court, and those who had already been allotted residential units were directed to shift to their residential units immediately. Further, the allottees were prohibited from transferring or subletting their respective allotted residential units without the permission of the corporation. The Ahmedabad Municipal Corporation and the state government were directed to ensure that no further encroachment is made on the Sabarmati River Front, Ahmedabad as and when the PAFs shift to their places. The Ahmedabad Municipal Corporation was directed to come out with a notice in newspapers to the effect that no encroachment on any government or corporation's land on the Sabarmati river front will be tolerated in future. A leaflet, if necessary, was also directed to be distributed amongst the PAFs, giving complete information with regard to their allotment, shifting and the order passed by the court to ensure peaceful resettlement and rehabilitation of the PAFs.

In *S. Vijayalakshmi* v. *Union of India,*[42] the Madras High Court examined the PIL challenging the notification issued by the Government of India whereby the CBI was included within the ambit of the second schedule to the Right to Information Act, 2005 as a result of which CBI became exempted from the provisions of the said Act subject to the provisos contained in section 24(1) thereof. The high court dismissed the PIL on merits, holding that the impugned notification is neither *ultra vires* the said Act nor violative of the Constitution.

In *Bharti Kashyap* v. *State of U.P.*,[43] the petitioner was aggrieved by the blocking the railway tracks by jat community resulting in inconvenience to the general public and disruption of rail traffic in the State of Uttar Pradesh and accordingly sought for a writ of *mandamus* directing the authorities to take reasonable action as per law for ensuring that the railway tracks blocked by the jat movement may be opened for the smooth movement of the railways. The high court directed the director general of police to take immediate measures to clear the railway tracks and provide

41 Special Civil Application No. 6280 of 2005, decided on 05.07.2011.

42 W.P. No.14788 of 2011, decided on 09.09.2011.

43 PIL No. - 16907 of 2011, decided on 18.03.2011.

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full protection for smooth movement of trains. The railways were directed to announce the restoration of normal traffic on the railway lines in between the Lucknow and Delhi and to make its own arrangement for security of railway tracks and passengers.

In *Senior Citizen's Service Trust* v. *Chief Secretary,*[44] the PIL filed in the Gujarat High Court sought the appointment of chief information commissioner and additional six information commissioners keeping in view such workload. The affidavit filed by the government disclosed the details of the appointments made by the Governor of Gujarat in exercise of powers conferred under section 15(3) of the Right to Information Act, 2005. The high court disposed of the PIL, observing that the grievance of the writ-petitioner no longer survived.

In *Jagmohan Singh Bhatti, Advocate* v. *State of Punjab,*[45] the Punjab and Haryana High Court declined to entertain the PIL seeking appropriate directions for payment of the first instalment of the arrears of pension due to the pensioners of the state, in view of the stand of the state that the first instalment of arrears of pension, wherever due, would be paid immediately after necessary documents of the pensioners are filed before the concerned authority.

In *Gaurav M Pandit* v. *Chief Executive Engineer*,[46] the petitioner highlighted the problem with regard to scarcity of water, and sought direction to the authorities to release water through main gates of Dharoi dam so as to ensure that water reaches Pethapur, in District Gandhinagar. The Gujarat High Court, in view of the stand taken by the authorities, observed that no further orders were required to be passed in this matter as a number of steps have already been taken by the State and that drinking water was now being supplied in the area, including the area of the petitioner.

In *Binod Kumar Srivastava* v. *State of Jharkhand,*[47] the Jharkhand High Court dismissed the PIL by a political activist who had challenged the public notice whereby the housing board was proceeding to auction a plot earmarked for a primary school in the master plan for commercial purpose. The high court found that there is no restriction in the Jharkhand State Housing Board Act, 1982 for selling of the commercial plots or buildings, and hence the PIL was without merit.

VII PIL AND SERVICE MATTERS

In *Gramin Majdoor Sabha, Gujrat* v. *Union of India,*[48] the PIL filed in the Gujarat High Court challenged a public notice for inviting applications for recruitment on fixed pay and on contract basis at village, block & district level by on-line computer examination under Mahatma Gandhi National Rural Employment Guarantee Scheme (MNGNREGS) on the ground that though such notice had been published but no provision has been made to reserve the posts in favour of scheduled caste or scheduled tribe candidates and, as such, was violative of article 16 (4) of

44 W.P(PIL) No. 118 of 2011, decided on 24.11.2011.
45 CWP No. 138 of 2011, decided on 07.01.2011.
46 W.P.(PIL) No. 38 of 2011, decided on 03.08.2011.
47 W.P.(PIL) No. 2278 of 2011, decided on 20.06.2011.
48 W.P (PIL) No. 8 of 2011, decided on 21.01.2011.

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the Constitution. The high court found that the public notice had been issued for engagement of persons on fixed pay and on contract basis, under a specified scheme, and there was nothing on the record to suggest that any post has been created involving reservation under article 16 (4) of the Constitution. Dismissing the PIL, the high court stated that the petitioner had no right to claim reservation under the scheme and also it is settled position of law that PIL is not maintainable in service matters.

In *Jawaid Rahmani* v. *Union of India*,[49] the Delhi High Court allowed the PIL in the nature of a writ of *quo warranto* challenging the continuance of the Director of National Council for Promotion of Urdu Language in his office on the ground that the appointment was contrary to the procedure prescribed by the Government of India inasmuch as no such advertisement was issued and that the search-cum-selection committee, without inviting applications and merely on the basis of consultation with certain other eminent persons of the field, proceeded to draw up the panel for recommendation to the Government of India. The high court took the view that though the petitioners were not aspirants to the post and it is settled law that PIL shall not be entertained in service matters, it is also well settled that a writ of quo warranto can be claimed in public interest even where the petitioner does not claim any right of appointment in himself.

VIII PIL ALLEGING ARBITRARY STATE ACTION

In *Krishan Lal Gera* v. *State of Haryana,*[50] the appellant challenged before the Supreme Court the *in limine* dismissal of the PIL filed by him in the Punjab and Haryana High Court. The high court had taken the view that no public interest was involved in the PIL which pertained to the alleged misuse of the Nahar Singh sports stadium complex for the purposes of a club. The apex court, while detailing the unfortunate state of affairs in regard to sports stadia and sports facilities in the country, observed that "whenever nepotism, favoritism and unwarranted government largesse to private interests, threaten to frustrate schemes for public benefit, it is the duty of high courts to strike at such action". The court observed that it was the function of the state to develop human resources, which it could do by creating a sports ground and encouraging sports. No part of the stadium or sports grounds could be carved out for non-sport or commercial activities to be run by recreational club or by private entrepreneurs. The court emphasized that human resource development and the health and welfare of the citizens was among the main functions and responsibility of government.

The apex court further held that "if a chunk of a government stadium, being prime land in the heart of the city meant for developing sports and athletics is misused or illegally allowed to go into private hands, it cannot be said that no public interest is involved. While the high courts are not expected to take policy decisions in regard to sports administration and infrastructure, nor expected to supervise the running of the sports stadia, they are bound to interfere and protect

49 W.P.(C) No.857 of 2011, decided on 09.12.2011.
50 AIR 2011 SC 2970.

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public interest when blatant misuse is brought to their notice. The high court should direct the concerned authorities to perform their duties and take action in regard to the irregularities, omissions and negligence, so that the interest of the public, particularly human resources development, could be protected". Noting that the matter required monitoring, the Supreme Court formulated the issues to be addressed and remanded the matter to the high court to deal with and dispose of the matter in accordance with law.

In *State of Rajasthan* v. *Sanyam Lodha*,[51] the Supreme Court allowed the appeal filed against the order of the Rajasthan High Court in a PIL filed by a legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the chief minister's relief fund under the Rajasthan Chief Minister's Relief Fund Rules, 1999. The PIL had sought that minor girls, particularly victims of rape, belong to a weak and vulnerable group who are seldom in a position to seek relief personally; and that if the chief minister was of the view that monetary relief should be granted to such victims of heinous and depraved crimes, all similar victims of rape should be given similar monetary relief. Like other governmental resources or funds, the distribution or monetary relief under the relief fund should be equitable, non-discriminatory and non-arbitrary. The PIL highlighted that paying very high amounts in only one or two cases merely because of media focus on those cases or because the case had become caste-sensitive or because it was politically expedient, while ignoring other similar cases, was neither warranted nor justified. Disbursement of monetary relief to the victims should not be in the absolute discretion or according to the whims and fancies of the chief minister and grant of monetary relief under the relief fund should not become distribution of government largesse to a favoured few. The high court had allowed the PIL, taking the view that all minor victims of rape required to be treated equally for the purpose of grant of relief by the chief minister under the relief fund. In the process, the high court had modified and read down rule 5 of the Relief Fund Rules, 1999.

The Supreme Court set aside the order of the high court, holding that in the absence of any challenge to the relief fund rules and an opportunity to the state government to defend the validity of rule 5, the high court ought not to have modified or read down the said rule. The apex court reasoned further that having regard to the scheme of the relief fund rules, grant and disbursal of relief amount under the said relief fund rules was purely *ex gratia*, at the discretion of the chief minister. The relief fund rules did not create any right in any victim to demand or claim monetary relief under the fund. Nor did the rules provide any scheme for grant of compensation to victims of rape or other unfortunate circumstances. In light of the nature and scheme of the relief fund and the purposes for which the relief fund was intended, it might not be possible to provide relief from the relief fund for all the affected persons of a particular category. Monetary relief under the relief fund rules might be granted or restricted in exceptional cases where the victims of offences, had been subjected to shocking trauma and cruelty. Naturally any public outcry or media focus might lead to identifying or choosing the victim, for the purpose of

51 2011 (9) SCALE 379.

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grant of relief. Other victims who were not chosen would have to take recourse to the ordinary remedies available in law. The court held that if one victim of a particular category is given a particular monetary relief under the relief fund rules, it did not follow that every victim in that category should be granted relief or that all victims should be granted identical relief. Where the payment was *ex-gratia*, by way of discretionary relief, grant of relief would depend upon several circumstances. The authority vested with the discretion might take note of any of the several relevant factors, including the age of the victim, the shocking or gruesome nature of the incident or accident or calamity, the serious nature of the injury or resultant trauma, the need for immediate relief, the precarious financial condition of the family, the expenditure for any treatment and rehabilitation, for the purpose of extension of monetary relief. The availability of sufficient funds, the need to allocate the fund for other purposes might also play a relevant role. The authority, at his discretion, might or might not grant any relief at all under relief fund rules, depending upon the facts and circumstance of the case.

On the issue of vesting of discretion in the chief minister, the Supreme Court referred to the case law to hold that where power was vested in holders of high office like the chief minister to give monetary relief from such a relief fund, it was no doubt a power coupled with duty. Nevertheless, the authority would have the discretion to decide, where the relief fund rules do not contain any specific guidelines, to whom relief should be extended, in what circumstances it should be extended and what amount should be granted by way of relief. All functionaries of the state were expected to act in accordance with law, eschewing unreasonableness, arbitrariness or discrimination. They could not act on whims and fancies. In a democracy governed by the rule of law, no government or authority had the right to do what it pleases. Where the rule of law prevails there is nothing like unfettered discretion or unaccountable action. But this did not mean that no discretion could be vested in an authority or functionary of high standing. Nor did it mean that certain funds could not be placed at the disposal of a high functionary for disbursal at his discretion in unforeseen circumstances. Whenever the discretion was exercised for making a payment from out of the relief fund, the court would assume that it was done in public interest and for public good, for just and proper reasons.

In *Binod Kumar* v. *State of Jharkhand,*[52] the Supreme Court upheld the decision of the Jharkhand High Court in a PIL complaining of amassing of illicit wealth by various former ministers, including a former chief minister of the state. The investigation required the determination of whether money had been acquired by an abuse of the official position amounting to an offence under the Prevention of Corruption Act and under the IPC, the persons by whom this had been done, the amount which had been so earned and places where it had been invested. As the PIL, on the face of it, required a systematic, scientific and analysed investigation by an expert investigating agency, the high court had referred the matter to the CBI.

In *Natvarlal Jivrajbhai Bhatia* v. *State of Gujarat,*[53] the petitioner, a resident

52 (2011) 11 SCC 463.

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of Damnagar town of Amreli District brought to the notice of the Gujarat High Court the illegal allotments of land and other benefits under "Pandit Din Dayal Awas Yojana," in favour of persons holding the posts like member of *Taluka Panchayat*, and president of consumer forum, instead of such allotment being in favour of the families below poverty line. The state conceded the infirmities have been committed in the allotment, and at the instance of the court, evicted the said persons from the land after cancellation of their allotment. Criminal prosecution was lodged against few erring officials. The high court, while recording its satisfaction that the authorities had proceeded to take care of the public interest involved in the matter by cancelling all illegal allotments of plots and also by actually evicting the persons who were occupying the plots, disposed of the PIL as no further monitoring was necessary.

In *Kidwai Nagar (East) Welfare Society (Regd.)* v. *State of Punjab,*[54] the grievance of the petitioner society in the PIL before the Punjab and Haryana High Court was with regard to the change of the site for the pumping station which was being constructed in and around the municipal park known as Nanda Park in Kidwai Nagar, Ludhiana for the project of storm sewer. According to the petitioner, the installation of the pumping station at the proposed site would cause danger to the life and liberty of the residents of the area, and was being installed without conducting any survey or taking advice from the experts. Since the level of Kidwai Nagar was lower than that of the Janakpuri area, there would be water logging at Kidwai Nagar if the accumulated rain water was allowed to be drained from Janakpuri to Kidwai Nagar. The authorities stated before the high court that the site of the pumping station had been shifted to a deserted place causing no nuisance whatsoever to the residents of Kidwai Nagar. As far as the apprehension of the petitioner society regarding accumulation of rainy water in Kidwai Nagar was concerned, the court held that it had no reason to doubt that the project was being implemented after due application of mind. The underground pipes were to pass through Kidwai Nagar due to natural flow of gravity. The high court declined to intervene in the matter, more so since 90% of the project had already been completed.

In *Khalikpur Gram Panchayat* v. *State of Gujarat*,[55] the PIL was filed in the Gujarat High Court by Khalikpur Gram Panchayat against raising the level of four-lane highway and construction of a bridge, on the ground that such raising will create problem of water-logging and drowning of entire hamlet of Anandpura. The PIL sought appropriate writ, order or direction against the authorities to take measures to ensure that there is no water logging and drowning of Hamlet Anandpura Kampa village Khalikpur. After hearing the parties, the high court found that the necessary steps had been taken by the authorities to avoid any flooding due to rise in the height of the road by increasing the water way between affected area than earlier waterway by nearly five times.

In *People's Union for Civil Liberties (Gujarat) PUCL* v. *State of Gujarat,*[56]

53 Special Civil Application No.924 of 2010, decided on 01.12.2011.
54 CWP No.11586 of 2011, decided on 19.12.2011.
55 W.P.(PIL) No.28 of 2011, decided on 25.08.2011.

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the PIL pertained to an incident wherein one Jabbardan Gadhvi self-immolated himself out of utter frustration and exasperation at the concerned government officials (i.e., *mamlatdar*, *talati* cum *mantri* and the police inspector) not providing him the necessary information regarding his family ancestral lands. The Gujrat High Court disposed of the PIL seeking immediate action against the erring officials, while recording that criminal prosecution had already been lodged against the *mamlatdar*, *talati* cum *mantri* and the police inspector.

In *Vijay Pal Singh* v. *State of Haryana*,[57] the PIL filed in the Punjab and Haryana High Court by the residents of sector 7, Panchkula, sought the quashing of the sanction letter whereby the estate officer, Haryana Urban Development Authority, Panchkula approved the revised building plan of Ajay Memorial Education Society (Regd.), for the construction of a high school at Panchkula, which according to the petitioners comprised the half portion of a public park. The PIL complained that the construction and running of a high school at the plot in question would violate the fundamental right to lead a quality life. The high court, while disposing off the petition, observed that the grievance of the petitioner stood substantially redressed in view of the categoric stand taken by the authorities to the effect that no recognition to run a high school has been granted to society nor the said society intends to establish a high school at the subject site.

IX PIL AND RIGHT TO LIFE

In *Ilaben Pathak* v. *State of Gujarat*,[58] the PIL filed in the Gujrat High Court portrayed the sorry state of affairs in matter of maintenance of public health, hygiene and sanitation by the Ahmedabad Municipal Corporation, which led to people, especially children from the lower strata, dying like flies on account of various diseases. The high court held that that the right to life enshrined in article 21 of the Constitution took within its sweep right to a life which was worth living, and included the right to food, clothing, and shelter, right to reasonable accommodation to live in, right to decent environment, and right to live in a clean city. The high court referred to the case law for the proposition that the right to live with human dignity enshrined in article 21 derived its life and breadth from the directive principles of state policy, contained particularly in articles 39(e) and (f), 41 and 42 of the Constitution, and would, therefore, include protection of health as envisaged in the directives. The term 'health' implied more than mere absence of sickness. The high court held that the expanded meaning of right to life was wholly justified, for, without health of a person being protected and his well being looked after, it would be impossible for him to enjoy other fundamental rights such as rights to freedom of speech and expression, to move freely throughout the territory of India, to practice any profession or carrying on any trade, occupation or business, to form associations guaranteed by article 19 of the Constitution in a positive manner.

The high court, accordingly, held that it should step in and find out ways and

56 2011 LawSuit (Guj) 1241.
57 CWP No.18833 of 2011, decided on 16.12.2011.
58 *Supra* note 6.

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means to bail out the corporation out of its present precarious position in order to protect the health of the citizens. The high court observed that by doing so, it would be exposing itself to the charge that the court has assumed the role of a "garbage supervisor", but the brunt of that cross was worth bearing, having regard to the ultimate benefit it would bring to the people.

In *Suo Motu* v. *State of Gujarat*,[59] the PIL originated from a letter addressed to Chief Justice of the Gujarat High Court by Peoples Training and Research Centre (PTRC), an NGO. The PIL highlighted the plight of the workers engaged in a manufacturing unit run by Corel Pharma Chem Ltd. in Kadi, Mehsana, who were exposed to fine dust of some polymers and who fell a prey to lung diseases, one of which was pnuemothorax. The high court referred to the case law for the proposition that right to health and medical care was a fundamental right under article 21 read with articles 39(c), 41 and 43 of the Constitution, and made the life of the workman meaningful and purposeful with dignity of person. The right to human dignity, development of personality, social protection, right to rest and leisure were fundamental human rights to a workman assured by the charter of human rights, in the preamble and articles 38 and 39 of the Constitution. Article 47 of the Constitution of India obligated the state to regard, as among its primary duties, the raising of the level of nutrition and the standard of living of its people and the improvement of public health. Facilities and opportunities, as enjoined in article 38, should be provided to protect the health of the workman. The state, be it union or state government or an industry, public or private, was enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement. In this view of the matter, the high court passed the following directions:

> The impacted workers were to be removed from work place till they achieved the normal levels of their body function. Such workmen would continue to be in the employment of the company, who would continue to pay wages to such workmen who were required to be taken out of service for no fault on their part.
>
> All workmen would be subjected to a follow-up examination after 6 months which would include clinical examination, chest radiography, blood microscopy and biochemistry for liver function tests, spirometry and HRCT thorax. Those showing abnormal parameters should be removed from further exposure and be made to return to job only after normalization of parameters.
>
> All the workers should be given regular training on safe handling of the material, good manufacturing process and use of personal protective devices.
>
> Videography of the said training given to the workmen be done and a soft copy of the same be supplied to the factory inspector.
>
> The company would ensure that necessary equipments to make the entire plant automatic were installed. Further, local exhaust ventilation should

59 2011 LawSuit (Guj) 1302.

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be installed at all source of dust generation.

The concerned authorities of the state government would make a survey all over the State of such factories engaged in manufacturing of hazardous products endangering the life of workers on account of direct exposure.

X PIL AND ENVIRONMENT

In *Meghwal Samaj Shiksha Samiti* v. *Lakh Singh,*[60] the Supreme Court dismissed the challenge to the high court's order in the PIL which had set aside the allotment of a village pond, shown as '*gair mumkin nada*' in the revenue records, to Meghwal Samaj Shiksha Samiti for the purpose of construction of a students' hostel. In light the finding by the high court that the land records clearly showed that the disputed plot allotted was part of the village pond, the apex court held that such land which formed part of a pond could not have been allotted for the purpose of making any construction. The court relied upon its decision in *Hinch Lal Tiwari* v. *Kamala Devi*[61] wherein it had been observed that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty, that they maintain delicate ecological balance and need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under article 21 of the Constitution. The Supreme Court further upheld the direction of the high court, which, having noted the fact that the land had been allotted to the *samiti* for the purpose of a students hostel for the benefit of backward classes, had directed the state government to allot a suitable alternative land for the said hostel purpose to the *samiti* within a specified time period.

In *State of West Bengal* v. *Howrah Ganatantrik Nagarik Samity,*[62] the appeal filed in the Supreme Court challenged the order of the Calcutta High Court whereby the high court had directed that the bus terminus at Esplanade be shifted to a distant place within six months. This order was passed in a PIL filed to protect and preserve the Victoria Memorial Hall and its green surroundings, in light of the recommendations of expert bodies including the National Environmental Engineering Research Institute (NEERI). The apex court took the view that shifting of the bus terminus from the Esplanade area was a long-term measure and not as an immediate measure. Before the bus terminus could be shifted from Esplanade, another suitable place had to be found to which the bus terminus could be shifted and various conveniences had to be provided for the traveling public at the new bus terminus which could not be done within a period of six months. The Supreme Court, accordingly, modified the order by directing the state government to consider and take appropriate action on the NEERI report recommending relocation of the bus terminus away from the Esplanade.

In *Friends of Victoria Memorial* v. *Howrah Ganatantrik Nagarik Samity,*[63] the

60 *Supra* note 8.
61 2001 (6) SCC 496.
62 2011(10) SCALE 310.

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Supreme Court dismissed the special leave petitions filed against the orders of the Calcutta High Court passed in a PIL seeking protection and preservation of the Victoria Memorial Hall and its green surroundings. The high court had *inter alia* directed that parking of all cars around the compound of the Victoria Memorial Hall shown as red- marked portions in the annexed map and nearby areas would be immediately prohibited and such prohibition would continue for 24 hours every day, including the holidays. A group of persons describing itself as 'the Friends of Victoria Memorial' then filed an application before the high court for modification of the aforesaid direction so as to permit morning walkers to park their cars in the north and south zones of Victoria Memorial Hall for two hours in the early morning. The high court, however, dismissed the application saying that car parking has only been prohibited around Victoria Memorial Hall and that persons desirous of morning walk may go to the *maidan* which was lying vacant and may also walk by the side of Ganges or the Eden Garden area and the area around the grounds of Mohun Bagan, East Bengal and Mohammedan Sporting Clubs where there was no restriction of parking the vehicles. The apex court upheld these directions, relying on report of the expert committee which had observed that parking activities add to pollution around the Victoria Memorial Hall.

In *Arvs Construction Pvt. Ltd.* v. *State of Uttarakhand,*[64] the petitioner sought an inquiry, through CBI in relation to allocation of fifty six hydro projects in the State of Uttaranchal, and further sought stay of all proceedings with respected to allotment of self-identified hydro projects made in response to the advertisement issued by Uttarakhand Jal Vidyut Nigam Ltd (UJVNL). The state admitted that the Environmental Impact Assessment of these projects has not been done at all. The Uttarkhand High Court, therefore, directed that before allotting any hydel project, be it small, medium or large, there should first be a detailed environmental impact assessment and scientific study of all the major and minor river basins in the State of Uttarakhand. Riparian rights of the settlements which were on the banks of these rivers must be taken care of. It was only thereafter that any steps were to be made for giving these hydel projects to either state or private developers.

In *Zakir Khan* v. *State of Orissa,*[65] the PIL before the Orissa High Court filed by a social activist prayed for a direction to the authorities to take immediate steps to ban all construction activities within the radius of one kilometre around the boundaries of Nandan Kanan Wild Life Sanctuary, and to prepare a comprehensive plan to sustain the fragile eco system of the area and not to change the nature and status of the land. The court commissioner reported construction activities, quarrying operations, presence of shops/dhabas and existence of roads within one kilometer radius of Nandankanan as also the efforts of builders to float plots for sale within the one kilometre radius. The state government, however, indicated that there was no proposal from Nandankanan biological park to acquire the land within one kilometre radius of the park for declaration of that area as a green belt. Reasoning that a right to hold property was a constitutional right as well as human right, the

63 (2011) 13 SCC 55.
64 W.P.(PIL) No.72 of 2010, decided on 15.07.2011.
65 OJC No.5038 of 2002, decided on 30.09.2011.

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high court took the view that it could not issue any direction *qua* the land in question. The high court, however, directed that if there was infraction of any of the provisions of the Water (Prevention and Control) Act, 1974, Air (Prevention and Control) Act, 1981 and The Environment (Protection) Act, 1986 as alleged in PIL, the concerned authorities were free to take necessary action against the persons concerned.

The Orissa High Court, in *Rabindra Kumar Bisoi* v. *State of Orissa,*[66] allowed the PIL complaining of illegal construction of mobile tower by Tata & IT Services Ltd. and Idea Cellular Ltd. on *bhoodan* land which was meant for the poor and landless persons. The towers were stated to be causing sound and air pollution. The high court directed the said companies to dismantle the towers, failing which the Collector, Puri was directed to do so.

In *Defence of Environment and Animals* v. *State of Tamil Nadu*,[67] the PIL stated that since Mudumalai tiger reserve was biologically and ecologically sensitive area and was one of the few tiger density areas in the world, the elephant rejuvenation camps should be conducted in the plains itself. The Madras High Court dismissed the PIL, holding that it was the policy decision of the government to conduct the elephant rejuvenation camp at Mudumalai forest and courts were not expected to poke their nose into each and every action of the government, particularly where no material was available with them to warrant interference into the decision of the government.

In *B. Ramesh Babu* v. *Secretary, Planning, Development and Special Initiatives Department, Government of Tamil Nadu,*[68] the PILs filed in the Madras High Court sought a *mandamus* directing the authorities to forbear from acquiring certain land of Mylapore village which belonged to Tamil Nadu Veterinary and Animal Sciences University for the purpose of construction of metro head quarters in the city of Chennai. The PIL alleged that the Institute of Poultry Production and Management of Madras Veterinary College was situated in the land. There were about three old trees with wild animals like spotted deer. It was alleged that during winter and summer seasons, rare varieties of birds from different parts of the world visited here for breeding purpose. The petitioners sent several representations to the authorities to defer their proposed construction as it would affect the health of the people as also the ecology and would destroy the scenic beauty of the area. The PIL stated that within one kilometer distance, an extent of fifteen acres of land was available at Saidapet under the direct control of the same Secretary to Government, Animal Husbandry Department, which was very much nearer to Saidapet Bus Terminus and Saidapet railway station. This was a junction that connected roads leading to various places like Adyar, OMR, Velachery, Tambaram, T. Nagar. Thousands of commuters were going and coming only from this area. If the metro office was put up there, it would serve the purpose of having integrated transport facility more effectively and without any hindrance to the public. It was further contended that the land in question did not even belong to the government, but was owned by the university, and that the land could not be gifted away by the government

66 *Supra* note 2a.
67 W.P No.28002 of 2011, decided on 09.12.2011.
68 W.P. No.2951 of 2011, decided on 28.04.2011.

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for the metro project. The state justified such acquisition by pleading that the project, including stations and other metro rail essential amenities, were finalized and designed by national and international technical experts, considering engineering, economics, environmental and social aspects.

The high court held that there was severe traffic congestion in almost all of the roads because of expansion, rapid development and growth of Chennai city. Thousands of passengers were expected to use the metro on the daily basis, which was a place of work and business leading to T. Nagar through Venkatanarayana Road, Ratna Nagar, Cenotaph Road, Rangoon Road and other adjacent roads. It had, therefore, become an urgent need of the day to switch over to metro rail for the convenience and comfort of the public. It could not also be disputed that metro rail was the only solution to mitigate the traffic congestion and air pollution. Hence, the decision taken by the authorities to shift the existing facilities available to the poultry production and management was in the larger interest of common public, who will benefit through the metro rail project. The high court held further that the acquisition of land for the purpose of metro rail project and the providing of sufficient land for shifting of the poultry management with all facilities should, however, meet the requirement of law of sustainable development. Economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation. The necessity to preserve ecology and environment should also not hamper the economic and other developments.

In *Kamini Devi* v. *State Of Punjab*,[69] the grievance of the petitioner pertained to noise pollution allegedly caused by certain persons by playing the loud speaker at a high pitch. It transpired that during the pendency of the PIL, said persons desisted from causing such noise pollution. The Punjab and Haryana High Court accordingly disposed of the PIL.

XI PIL AND SECULARISM

In *Rajesh Himmatlal Solanki* v. *Union of India,*[70] the question before the Gujarat High Court was whether offering of prayers at "Foundation Laying Ceremony", called in popular language as "*Bhoomi Pujan*" for construction of new building could be said as non-secular activity. It was contended in the PIL that offering prayers with the help of *Pandits* who spoke *Sanskrit* slokas at the *Bhoomi Pujan* could be termed as identification by the constitutional dignitaries or the high court with hindu religion and such activity would hurt the religious feeling of the citizens who profess other religion and, therefore, such action can be said as non-secular and deserves to be declared as unconstitutional. The high court dismissed the PIL while observing that offering of the prayer to the earth at the time of foundation laying ceremony could be termed as non-secular action and such action can not be termed as an activity which may result into promoting any particular religion.

In *Kamal Nayan Prabhakar* v. *Union Of India*,[71] the PIL filed in the Jharkhand

69 CWP No. 7650 of 2011, decided on 22.12.2011.
70 2011(1) GLR 782.

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High Court by a young boy complained that the Governor of Jharkhand, while taking the oath has violated article 159 of the Constitution of India, because of the sole reason that in place of the word "God" and "*Ishwar*", he uttered the word "*Allah*" added with three words "*Ke Nam Par*" in his oath. The high court dismissed the PIL terming it to be "shameful" and an attempt to "pollute the soul of the Constitution". The high court observed that in a secular country, all religions are to be respected, and that no one can be permitted to use the court as a launching pad for creating disharmony and destruction in the matter of any religion.

XII MISUSE OF PIL

In *P. Seshadri* v. *S. Mangati Gopal Reddy.*[72], the Supreme Court allowed the appeal directed against the judgment of the Andhra Pradesh High Court in a PIL, whereby the high court had set aside the extension granted to the appellant as officer on special duty in the establishment of Tirumala Tirupathi Devasthanam till 01.08.2011. Noting that this was a case where a pure and simple service matter had been deliberately disguised as a PIL at the instance of some disgruntled employees who were perhaps hopeful of occupying the seat presently occupied by the appellant, the Supreme Court reiterated that it did not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals, i.e., busybodies; having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition was liable to be dismissed at the threshold.

The apex court referred to the case law for the proposition 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 is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of PIL should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta.

In *Kalyaneshwari* v. *Union of India,*[73] the petition filed in the Supreme Court by a registered society sought issuance of a writ of *mandamus* directing the Union of India and other states to immediately ban all uses of asbestos in any manner whatsoever; and that a committee of eminent specialists be constituted to frame a scheme for identification and certification of the workers/victims suffering from asbestosis or other asbestos related diseases or cancer. The petitioner also prayed that the governments should be directed to identify the workers/victims in the respective states and union territories and to provide them due treatment as also to take measures to prevent harmful effects of asbestos in the factories or establishments

71 WP (PIL) No. 5334 of 2011, decided on 22.09.2011.
72 AIR 2011 SC 1883.
73 2011(1) SCALE 651.

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where such activity was being carried out and, further, to initiate criminal proceedings against all the responsible persons including the owners of such factories, organizations and associations for infringing the right to life of the asbestos victims. The apex court, while noting that the issue involved had already been dealt with in *Consumer Education and Research Centre* v. *Union of India,*[74] observed that the valuable time of the court has been consumed in dealing with such PILs which are filed without proper study and data, and merely on some reference to very few workmen working in an industry and without projecting any requirement at the national level demanding the attention of the Supreme Court in treating it as a national problem. Every litigant, who approaches the court, owes a duty to approach the court with clean hands and disclose complete facts. The apex court further found in this case that the PIL was a result of business rivalry and was filed by the petitioner at the behest of other industries. The court dismissed the PIL, stating that a petition which lacked *bona fide* and was intended to settle business rivalry or was aimed at taking over of a company or augmenting the business of another interested company at the cost of closing business of other units in the garb of PIL would be nothing but abuse of the process of law.

In *A. Thirumaran* v. *Inspector of Police*,[75] the PIL before the Madras High Court, the petitioner, who was a practising advocate, sought a writ of *mandamus* directing the authorities to shift the wine shop located just opposite to his office, alleging that it is causing public nuisance. The high court found that the shop was neither functioning in violation of the Tamil Nadu Prohibition Act, 1937 or Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, nor was it the case of the petitioner that the said shop was located near to any school, religious place or hospital. Exploring the case laws on nature and scope of PIL, the high court dismissed the instant PIL terming it to be founded on personal vendetta.

In *S. Bhoopathy* v. *Govt. of Tamil Nadu,*[76] the Madras High Court dismissed the PIL seeking a *mandamus* against the authorities requiring them to evict private respondents from the land adjacent to the Sago Factory sold by the petitioner. The high court observed that the concept of PIL has been evolved for the welfare of the people who are in a disadvantaged position and are unable 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. PIL was not meant to be a weapon to challenge the financial or economic decisions which are taken by the government in exercise of their administrative power. Disputes between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL. Deprecating that PIL is now tending to become publicity interest litigation or private interest litigation, the high court imposed costs of Rs. 20,000/- on the petitioner.

In *Vinod Kumar Kanojia* v. *Union of India*,[77] the PIL before the Delhi High Court filed on behalf of the community of dhobis alleged that the film titled "*Dhobi*

74 (1995) 3 SCC 42.
75 WP No.80 of 2011, decided on 04.03.2011
76 (2012) 1 MLJ 554.
77 AIR 2011 Del 73.

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Ghat" had affected the sensitivity of the *Dhobi* community and was violative of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The high court held that the term "*Dhobi Ghat*" was a description of a place where clothes are washed and that the name a movie cannot be offensive to the caste in question. The high court observed that a public cause is required to be espoused in a PIL. The high court dismissed the present PIL with costs of Rs. 25,000/-, terming it to be an abuse of process of court defeating the basic concept of PIL for public good.

In *All India Bank Officers Association* v. *State Bank of India*,[78] the PIL before the Madhya Pradesh High Court challenged the action of the State Bank of India to acquire the business of the State Bank of Indore under section 35 of the State Bank of India Act, 1955. The high court dismissed the PIL with costs of Rs. 10,000/-, observing that the PIL was a sheer abuse of process of the court inasmuch as nothing had been shown from which even remotely it could be said that the issue involved was connected with public interest or that any legal rights of the public in general were being affected or any pecuniary loss or any loss was going to be caused to the public at large.

In *M. Kalaiselvan* v. *Deputy Secretary,*[79] the PIL sought the issuance of a writ of *mandamus* directing restoration of the public pathway to the villagers by way of removing the encroachment. The writ petitioners was found to have suppressed the pendency of the suit filed against them in the year 2009 by the respondents praying for the relief of preliminary decree of partition of the suit property comprised within the aforesaid pathway. The high court dismissed the PIL, while imposing costs of Rs. 50,000/- and deprecating such misuse of PIL to resolve civil disputes.

In *M. P. Shahul Hameed, Bismi Manzil* v. *State of Kerala,*[80] the PIL before the Kerala High Court pertained to the allotment of the wholesale depot to the respondent, which was the result of an earlier writ proceeding initiated by the petitioner's daughter and which had been confirmed in yet other writ proceedings by the other aggrieved parties. The high court found that the petitioner did not approach the court with any genuine public interest but for the personal interest, and dismissed the PIL with cost of Rs. 25,000/-.

In *Ashok Kumar* v. *President, Jan Jagriti Vikas Manch Samiti, Pali,*[81] the PIL before the Rajasthan High Court challenged the order of the permanent *Lok Adalat* for construction of a *nala*, alleging that there already existed proper drainage and such construction of new drainage would amount to wastage of public money. The high court dismissed the PIL on finding that the petitioner was pursuing his own interest.

In *Ramachandran* v. *Kondazhy Grama Panchayat,*[82] the PIL in the Kerala High Court complained of encroachment of panchayat property by the respondent, which blocked a drainage resulting in inconvenience to the petitioner's residential

78 AIR 2011 MP 132.
79 W.P.No.13355 of 2011, decided on 2.08.2011.
80 WP(C).No. 10769 of 2011(S), decided on 04.04.2011.
81 C.W.P (PIL) NO.3980/2011, decided on 16.05.2011
82 WP (C) No.5803 of 2011, decided on 23.03.2011

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house. The Kerala High Court, while dismissing the petition held that it is well settled that PIL is not a remedy for settling private disputes.

In *Rajesh Himmatlal Solanki* v. *Union of India,*[83] the Gujarat High Court dismissed PIL with exemplary cost of Rs. 20,000/- wherein it was complained that offering of prayers at "Foundation Laying Ceremony", called in popular language as "*Bhoomi Pujan*" for construction of new building hurts the religious feeling of the citizens who profess religion other than hinduism, after finding that the petitioner was not espousing his own cause but that some organisation was behind him whose cause is sought to be agitated by the petitioner in the petition.

In *Haji Md. Ishfaque* v. *State of West Bengal,*[84] the challenge before the Calcutta High Court was in relation to a development agreement between the board of *Wakf*, West Bengal and the private respondents in respect of certain wakf properties. The PIL alleged that the board has a nexus with the private respondents for usurping wakf property. It transpired that the petitioner had some degree of interest in the management of the wakf as the petitioner wanted to be on the proposed committee for managing the concerned wakf estate as a treasurer. The high court declined to entertain the PIL holding that when there was material to show that a petition styled as a PIL was nothing but a camouflage to foster personal disputes, such petition was to be thrown out.

In *Shree Isswar Benode Behary* v. *Kolkata Municipal Corporation,*[85] the Calcutta High Court dismissed the PIL alleging inaction by the authorities in not passing necessary orders against the private respondent and thereby allegedly abetting conversion of a residential building into a factory premises which, according to the petitioners, was causing noise pollution and also endangering the heritage building of the petitioners. The high court found that not only had the authorities taken action on the complaint of the petitioners, there was a civil dispute between the petitioners and the private respondent. Further, the authorities had found that that no severe superficial distress was observed in the heritage building, and that the claim that noise pollution was being caused by ten to twelve shops in the vicinity about whom the petitioner had no grievance, but had targeted only the private respondent. The high court emphasized that a PIL cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge or enmity.

In *S. K. Chatterjee* v. *Union of India*,[86] a PIL filed in the Delhi High Court by a real estate consultant sought that the government department/ PSUs /state government/ semi-government agencies comply with CVC guidelines while awarding the civil contracts, pointing out that non-observance of the CVC guidelines had resulted in award of civil contract in favour of a private developer, instead of another qualifying bidder. The said qualifying bidder had challenged the award of the contract to the private developer by way of writ proceedings which had

83 *Supra* note 70.
84 WP No.498 of 2011, decided on 02.12.2011.
85 WP No.921 of 2011, decided on 23.12.2011.
86 WP (Civil) No.3923 of 2011, decided on 27.07.2011.

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culminated in dismissal of its case right up to the apex court. Thereafter, the PIL had been filed espousing the case of the unsuccessful qualifying bidder. The high court found the petition styled as a PIL is nothing but a camouflage to foster personal disputes. The high court observed that PIL or the epistolary jurisdiction of the high court could be invoked if there was a cause which was required to be fought or brought to be adjudicated before a court of law pertaining to the grievance, anguish or agony of people who could not come to court or there were cases where greater public interest related to environment, pollution, fiscal irregularities, holding of public office without eligibility criteria, or protection of democratic values. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The verification of antecedents of a person who comes to court in a PIL and his real concern for public interest require keen scrutiny. The high court dismissed the PIL with costs of Rs. 75,000/-, observing that the battle between the two private parties has been metamorphosed into a public cause in an extremely maladroit manner.

In *Sudhir C Shah* v. *Gujarat Urja Vikas Nigam Limited,*[87] the Gujarat High Court dismissed the PIL with costs, wherein the petitioner had expressed an apprehension that a loss will be suffered by the government exchequer, due to the decision of Gujarat Urja Vikas Nigam Limited to float tenders for purchase of distribution transformer. The court found that the petitioners were setup by persons who were actually interested in the business of transformers.

In *Baban Choubey* v. *State of Jharkhand,*[88] the PIL before the Jharkhand High Court complained of unauthorized construction over certain land surrounded by about 200 houses and alleged that the residents of those houses will suffer a great loss because of this construction. The high court found that the petitioner was not the resident of the said locality and area and that he was living in the house of one of the respondents about 67 kms away from the plot in dispute. That respondent had filed a suit against the authorities in respect of the same land, and had failed to obtain any injunction. It was thereafter that the PIL had been filed. The high court found that none of the residents raised any objection with respect to the proposed construction. The high court dismissed the PIL, holding that the petition was *malafide* and an abuse of the process of the court.

In *Advocate S. Rajeev* v. *State of Kerala,*[89] the Kerala High Court declined to entertain the PIL complaining that an extent of 7.2 acres of land belonging to the revenue department along with an old building was sought to be transferred in favour of the police department for the purpose of construction of a permanent police station. The PIL alleged that the construction of such a building would offend the religious feelings of the people, but yet the Home Minister of the State of Kerala, with a view to gain a political advantage from such an activity in the ensuing elections, was proposing to lay foundation stone for the police station. The high

87 WP (PIL) No.85 of 2011, decided on 20.10.2011.
88 WP (PIL) No.5388 of 2009, decided on 04.07.2011.
89 2011 (2) KLT SN 8.

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court, reasoning that it is a part of the political activity in a democratic system to endear oneself to the voters through the means which were not legally prohibited, termed the PIL to be essentially a political interest litigation to settle political issues.

In *Niyamatali Kayamali Saiyed* v. *State of Gujarat,*[90] the PIL was filed by a former sarpanch of the concerned panchayat alleging inaction on the part of the state in not initiating appropriate inquiry against the present sarpanch. It appeared from the record that prior to the filing of the PIL, the district development officer had called for a report from the *taluka* development officer, Gandhinagar on the allegations of the petitioner, and found the allegations made by the petitioner to be baseless. The high court summarily dismissed the PIL holding that the PIL had been filed with *malafide* intention.

In *Asok Pande* v. *Union of India*,[91] the PIL filed in the Gujrat High Court by a practicing advocate sought a writ of *quo warranto* thereby asking the Governor of Gujarat as to how she is holding the office of Governor and a writ of certiorari quashing her appointment. The PIL stated that the Chief Minister of the State had written to the President of India seeking recall of the Governor, but the Governor had not been recalled. The high court observed that the Governor of State shall hold office during the pleasure of the President under article 156 of the Constitution and that no direction can be given to President of India to recall the Governor. The high court dismissed the PIL with costs of Rs. 25,000/-, and termed it to be a fine specimen of abuse of process of the court in the name of PIL.

In *Umesh Kumar Pandey* v. *State of M.P.,*[92] the grievance of the petitioner before the Madhya Pradesh High Court was with regard to non declaration of his result for the academic session 2007-08. The high court, terming the PIL to be misconceived, declined to interfere in the matter.

In *Sudhir Singh* v. *Hindustan Petroleum Corporation*,[93] the Madhya Pradesh High Court dismissed the PIL seeking a direction commanding Hindustan Petroleum Corporation Limited to open a retail outlet at a particular place. Finding no merit in the petition, the court dismissed it stating; the instant writ petition appears to be sponsored petition which has been filed at the instance of the persons who are interested in being appointed as dealer of the retail outlet in question.

In *Ishar Singh Walia* v. *State of Punjab,*[94] the Punjab and Haryana High Court declined to entertain a PIL filed by a retired government employee at a belated stage, challenging the grant of certain benefits by way of salary to another employees who had been officiating on a higher post and had retired. The high court held that a mere reading of the pleadings contained in the writ petition indicated that the case was not a PIL.

In *Niranjan Tripathy* v. *State of Orissa,*[95] the PIL before the Orissa High Court by a practicing advocate relied upon press reports to state that Cuttack Development

90 W.P (PIL) No. 120 of 2011, decided on 16.11.2011.
91 2011 LawSuit (Guj.) 1197.
92 W.P.No.767/2011, W.P.No.9665/2010, W.P.No.17858/2010, decided on 10.03.2011.
93 W.P No.5854/2011, decided on 13.07.2011.
94 CWP No. 9455 of 2011, decided on 20.12.2011.
95 WP (C) No.26393 of 2011, decided on 08.12.2011.

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Authority (CDA) and Bhubaneswar Development Authority (BDA) arbitrarily allotted plots from the chairman's discretionary quota in prime localities to the sitting judges and former judges of the high court and former judges of the Supreme Court as also IAS, IPS and IFS Officers. It was specifically alleged that the authorities, namely, BDA and CDA have indiscriminately distributed plots amongst the rich and influential persons.

The high court formulated issues pertaining to the credentials of the petitioner and his *bonafides* in filing the PIL. The high court recorded that when the matter was listed for admission, the court required the petitioner to produce the discretionary quota regulations/guidelines, if any, along with other necessary documents in support of his case, and to direct the parties not to go to the press/electronic media for publication of any type of news item with relation to this case. The high court observed that despite the said order and during the pendency of the present proceedings, the allotment of discretionary quota to various persons was widely published both in the electronic media as well as print media. The high court opined that this practice by itself clearly exhibits that the real object behind filing of this writ petition is nothing but getting publicized through media by maligning various constitutional functionaries and others. According to the high court, the real object of the petitioner behind invoking the PIL jurisdiction of the court by filing the PIL, which was not in conformity with the 2010 rules was to allow to be telecast news items of the subject matter in the writ petition and to get it published in the electronic media as well as print media with a designed intention to malign and disrepute the allottees whose names are referred to in the petition, some of them who are constitutional functionaries having constitutional protection in the interest of the institution of judiciary. The high court opined that a careful reading of articles 121 and 124 of the Constitution and Judges Enquiry Act, 1968 give a clear indication that the conduct and alleged misdemeanor of a judge are not open for public criticism, except in the manner prescribed under the provisions of article 124 read with the Judges Enquiry Act. The high court held that the PIL was not filed with a *bona fide* intention to prevent any public injury or protect public interest. Further, the high court held that permission to withdraw the writ petition with liberty to file the same again in conformity with the PIL Rules, 2010 could not be granted as it would amount to an abuse of process of the court.

The high court referred to the "mandatory" rule 9 that provides that where the court is of the opinion that the PIL filed by the petitioner is frivolous or vexatious or is devoid of public interest or is filed as camouflage to foster personal gain or is filed for extraneous and ulterior motives, it shall dismiss the same with exemplary cost. The high court held it would desist from doing so, having regard to the fact that the petitioner is a young practicing advocate.

In *Yakub Ali Khan* v. *State of Madhya Pradesh,*[96] the PIL in the Madhya Pradesh High Court alleged that private persons had in collusion with the state officials encroached on government land and had given the same on rent to various persons. It transpired that the petitioner had filed a writ petition earlier in respect of the

96 W.P.No.1528/2011, decided on 28.01.2011.

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similar grievance. The high court had disposed of the said writ petition, with direction that since the petitioner had remedy under section 248 of the M.P. Land Revenue Code for removal of encroachment and since he has already moved an application before the collector, the collector shall examine the representation and after necessary enquiry and affording opportunity of hearing to all the necessary parties pass an appropriate order within a period of three months. In compliance to the aforesaid order, the collector, had decided the matter, with a finding that there is no encroachment over the government land. The petitioner thereafter filed the PIL, which was dismissed by the high court holding that no public element was involved in this petition and, further, the question of title cannot be adjudicated in a petition filed under article 226 of the Constitution.

In *Basant Kumar Choudhary* v. *State of Bihar,*[97] the Patna High Court declined to entertain as PIL the petition seeking due adherence to the law in matters of appointment to the various posts in the universities in view of the fact that its decision in the previous cases had answered the issues raised in the PIL.

In *Abhishek Jain* v. *Union of India*,[98] the PIL before the Delhi High Court prayed for commanding the authorities to demarcate a place for demonstration/ political rallies/any protest by any organization or political parties against the authorities in the outskirts of Delhi to enable the offices to run smoothly and also to enable the common man to attend to their duties without any traffic jam caused due to the rallies and demonstrations in the public interest. The high court held that not only could such a *mandamus* not be issued, the prayer clause was not in consonance with the pleadings and, in fact, there were contradiction in terms.

XIII PIL AND ALTERNATE REMEDIES

In *Sanjay Dinanath Tiwari* v. *Director General Of Police,*[99] the Bombay High Court declined to reject the PIL on the ground of the existence of an alternate remedy, taking the view that while the general rule is to leave the party to adopt the alternate remedy available, the high court was not powerless to issue an appropriate writ when police fail or avoid to use their powers available under the Cr PC to unearth serious economic crimes complained of. The PIL had sought independent investigation against the president of the Mumbai Pradesh Congress Committee, who was alleged to have huge properties and assets disproportionate to his known sources of income, as also properties in the names of members of his family who had no known sources of income. The high court referred to the material on record against the said president to hold that the present case fell in that category of cases where the high court would exercise its jurisdiction under article 226 of the Constitution though the petitioner has not followed the procedure prescribed under the code.

In *Niraj Vikas Pabale* v. *Tahsildar, Wardha,*[100] the Bombay High Court entertained a letter written by fifteen persons as PIL, which highlighted large scale

97 C.W.J.C No.8729 of 2011, decided on 9.09.2011.
98 2011(182) DLT 519.
99 WP (PIL) No.51 of 2010, decided on 22.02.2011.
100 *Supra* note 4.

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illegal construction in collusion with the authorities. The high court rejected the contention that the PIL was not maintainable due to availability of alternate remedy. The high court held that the bar of alternate remedy is self imposed and never absolute in writ jurisdiction under article 226 of the Constitution. In present facts, there was an apparent failure on part of state government and local bodies to effectively discharge their statutory obligations. When petitioners did approach the authorities for redressal and those authorities ignored it, it is obvious that their refusal to act was not mere omission. The high court found that these local bodies, their employees and also the elected representatives tacitly permitted the unauthorized constructions to come up, and were party to it. Since the authorities were interested in protecting the unauthorized construction, asking the petitioners to approach these authorities would be nothing but to oblige builder by giving him a further and undue time.

In *K.C.Abraham* v. *State of Kerala,*[101] the writ petition filed in the Kerala High Court by a drug manufacturer related to the common issue as raised in a PIL filed by Peoples Union for Civil Liberties (PUCL).[102] The PIL sought directions to ban the drug "Musli Power Xtra" being manufactured and marketed by the said drug manufacturer, which was being misleadingly advertised through print and electronic media as well as on internet as a magical solution for all disorders of sex related problems. The writ petition filed by drug manufacturer sought quashing of notification prohibiting the manufacture of "Musli Power Xtra" drug for purposes of sale issued by the Drugs Inspector (Ayurveda), Ernakulam Bureau. The high court declined to decide the matter, opining that the entire issue has to be dealt with and considered by the government and other competent authorities having necessary expertise and wherewithal. The high court directed the government to take appropriate steps through its designated agency to send the above drug for analysis/ test to the Central Drugs Laboratory, Ghaziabad. The government was directed to ensure that the authority concerned which is authorized to take samples complies with the statutory procedural mandates as regards sampling and sealing as provided in the relevant Act and rules.

In *Mohammadi Social Welfare Society (Regd.)* v. *Union of India,*[103] the petitioner challenged the appointment of a member of the Chandigarh *Wakf* board, who was further appointed as the Chairman of the Chandigarh *Wakf* board on the ground that the said person was a full time employee and was involved in a civil litigation arising from the alleged illegal possession of the wakf properties by the board. The Punjab and Haryana High Court declined to entertain the PIL, while directing the petitioner to highlight its grievances in the matter by filing a representation before the Home Secretary, Union Territory, Chandigarh.

In *Haji Md. Ishfaque* v. *State of West Bengal,*[104] the challenge before the Calcutta High Court was to a development agreement between the board of *wakf*, West Bengal and the private respondents in respect of certain wakf properties. The PIL

101 WP(C).No. 11410 of 2011(A), decided on 27.06.2011.
102 Writ Petition No. 37511/09.
103 CWP No. 4818 of 2011, decided on 17.03.2011.
104 WP No.498 of 2011, decided on 2.12.2011.

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alleged that the board has a nexus with the private respondents for usurping wakf property. The high court declined to entertain the PIL, holding that whatever grievance the petitioner might have had against the board of wakf, he should approach the wakf tribunal in the first instance and not move the civil courts or the high court under the article 226 of the Constitution.

In *Manoj* v. *Kanchiyar Grama Panchayath*,[105] the Kerala High Court declined to the entertain the PIL alleging that a commercial building had been constructed in violation of the conditions of permit granted by the panchayat and the provisions of the building rules, on the ground that the petitioners should pursue their remedies before the panchayat.

In *Himmat Singh Shergill* v. *Parkash Singh Badal,*[106] the PIL in the Punjab and Haryana High Court relied on newspaper reports as per which the chief minister and the deputy chief minister of the State of Punjab had interest in transport companies which own and operate luxury tourist buses, and had manipulated the transport policy of the State of Punjab so as to favour those transport operators at the cost of the public exchequer. The PIL sought an independent investigation by an agency like the central bureau of investigation or by a sitting or a retired high court judge. The high court declined to entertain the PIL, opining that the petitioner should have taken recourse to the remedy available under the provisions of the Code of Criminal Procedure rather than approaching the court by way of PIL.

In *Devi Lal* v. *State of Punjab*, [107] the PIL filed in the Punjab and Haryana High Court sought directions for removal of encroachments allegedly committed by the certain persons in collusion with state officials on the public road leading to cremation ground, shiv mandir, chunchoki, school and pond in village Detharawali, Tehsil Abohar, District Ferozepur. The petitioner had made representations before the Block Development & Panchayat Officer, Ferozepur, Director, Rural Development and Panchayat, Ferozepur as well as to the Deputy Commissioner, Ferozepur. The high court declined to entertain the PIL while directing the said authorities to decide those representations.

In *Kuldeep Khandelwal* v. *Union Territory, Chandigarh,*[108] the Punjab and Haryana High Court declined to entertain a PIL at the instance of an advocate on the basis of a news item, whereby an investigation by the CBI or some other independent agency was sought in the matter of missing children in Union Territory, Chandigarh and Panchkula. The high court took the view that the petitioner, who was also not present when the case was called up for hearing, had not attempted to obtain such information under the Right to Information Act or through any other forum.

XIV CONCLUSION

The survey indicates that huge variety of PIL actions were brought before the Supreme Court and the high court during the survey period. While the courts have

105 W.P(C). NO. 19616 of 2011, decided on 19.07.2011.
106 CWP No.18705 of 2011, decided on 15.12.2011.
107 CWP No. 2362 of 2011, decided on 15.03.2011.
108 CWP No. 11517 of 2011, decided on 20.12.2011.

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sought to emphasize the remedial nature of PIL and its salient features, the approach taken by the different high courts towards PIL does vary. Further, it is a matter of regret that the Bombay High Court has, in *Niraj Vikas Pabale* v. *Tahsildar, Wardha,*[109] given the credit for the origin of PIL solely to the Supreme Court, by holding that the apex court "initiated" PIL and that PIL "is upshot and product" of the Supreme Court. While the contribution of the Supreme Court in developing the jurisprudence of PIL cannot be minimized, such statement on the origin of PIL is factually inaccurate, since PIL in India, is not any judicial brainwave. Further, the import of some of the propositions formulated by the court in the cases listed in this survey to check misuse of PIL is a matter of concern. It will, however, be regrettable if in the process of regulating PIL to check misuse of PIL, the rules have such stringent requirements that even genuine PIL litigants are discouraged to file PIL. It must be appreciated that the courts are made for people and not people for the courts. In this view of the matter, it is simply unfair to impose obligations on the PIL litigants to verify the truth of the facts in a press report or comply with the procedural requirements of the CPC before moving the court. Had that been the approach in 1979, the apex court could not even have entertained *Hussainara Khatoon*'s case, and there would have been no PIL jurisprudence in the country today. Indeed, such approach is inconsistent with the very important characteristic of PIL that the burden of proving the facts is shifted from the PIL litigant, and that it is the court that may appoint a commission to investigate and verify the facts. Further in *Niranjan Tripathy* v. *State of Orisa*[110] the high court referred to the "mandatory" rule 9 requiring the imposition of exemplary cost for misuse of PIL. It is true that it is professionally improper for a litigant or his lawyer to discuss a matter which is *sub judice* before the media. Again, given that the high court found the credentials of the petitioner to be suspect and the PIL *malafide*, could the high court choose not to give effect to its own "mandatory" rule of imposing exemplary costs simply because the petitioner happened to be a practicing advocate. These cases underscore the need to revisit the approach of the court towards PIL and PIL litigants. PIL has served well over the years as a strategy to enhance the credibility of the judiciary as an institution. Subjective, and hence arbitrary, exercise of power would, however, destroy the credibility of PIL itself.

109 *Supra* note 4.
110 *Supra* note 95.

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