

PUBLIC INTEREST LITIGATION

*Aman Hingorani**

I INTRODUCTION

THE SUPREME Court and the high courts have, in the year under survey, utilized the unique jurisprudence of public interest litigation (PIL) notably to check arbitrary state action and governmental lawlessness. At the same time, the courts have given due deference to the state in matters of administrative and policy issues. The cases covered in the survey this year exemplify the remedial nature of PIL which renders it collaborative and non adversarial, yet inquisitorial in character. It is the remedial nature of PIL which requires the court to transcend the traditional judicial function of adjudication to assume new roles in addressing cases lacking the traditional *lis*, with the objective of protecting the fundamental rights guaranteed under part III of the Constitution. From such new judicial roles, not prohibited by the language of articles 32 and 226 of the Constitution, flow the other distinctive features of PIL such as procedural flexibility, *suo moto* actions by the court, and the conferral of standing on persons acting *pro bono publico* to maintain a PIL.¹ By the same token, the courts have had to keep a constant vigil to prevent misuse of PIL by unscrupulous litigants who take recourse to the PIL jurisdiction for personal, ulterior or extraneous considerations. PIL has served as an effective mechanism in enabling the courts to take a pro-active role in discharging their constitutional obligation of protecting the guaranteed fundamental rights involved in the cases covered in the survey.

II NATURE AND NORMS OF PIL

In *Girish Vyas v. State of Maharashtra*,² the appeals before the Supreme Court arose out of two PILs before the Bombay High Court challenging the building permission issued by Pune Municipal Corporation for private residences on a plot reserved for a public purpose, namely, a primary school. The grievance was that

* Phd. Advocate-on-Record and Mediator, Supreme Court of India.

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

2 AIR 2012 SC 2043.

such permission was granted on the instructions of the state government, flouting all norms and mandatory legal provisions. The high court allowed the petitions, cancelled the commencement and occupation certificates, and directed the demolition of the construction made. The Supreme Court, while confirming the view of the high court, referred to the non adversarial nature of PIL as also its inquisitorial character. The Supreme Court emphasized that PIL should be viewed as a challenge and an opportunity to government and its officers to make basic human right meaningful.

Similarly, in *Manohar Joshi v. State of Maharashtra*,³ the Supreme Court upheld the decision of the Bombay High Court allowing the PIL challenging the illegal construction of a residential complex on land reserved for a public amenity by the son-in-law of the state's chief minister. The court cancelled such permission granted by the state for such construction and directed demolition of illegal residential complex. In this case too, the Supreme Court distinguished the nature and scope of PIL from proceedings of a civil court, and reiterated that the inquisitorial function of the court in a PIL case entitled it to inquire into the matter and call for original records.

In *J.S. Bindra v. State of Gujarat*,⁴ the grievance of the petitioners before the Gujarat High Court was that the historical hope bridge should not be dismantled and that it, instead, should be declared as a protected monument. The high court examined in depth, the meaning and the scope of PIL, and took the view that it would allow a PIL where the state action violates any of the rights enshrined in part III of the Constitution of India or when the action complained of is palpably illegal or *mala fide* and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance. The court held that it would entertain the PIL if it is found that the effort of the state is to put the state action under the carpet and have it thrown out on technicalities. Noting the importance of PIL in maintaining the credibility of the judiciary, the court observed that it would entertain a matter as a PIL if it is a matter which, if not remedied or prevented, would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country.

The high court held that it is its duty to see as to whose cause is the petitioner promoting by filing a PIL, whose fundamental or other rights, if any, has been infringed, and who is to be relieved against any wrong and injury caused to him for which he cannot come to this court. That, according to the high court, is the test for determining the maintainability of any petition which purports to be in 'public interest' and for a 'public cause',

The high court observed further that where the person or a group of persons approach the court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the constitutional law, it must be seen that such person or group of persons is not a busy body of meddlesome interloper and do not have *mala fide* intention of vindicating personal vengeance or grievance or to resort to black-mailing or considerations extraneous to public interest.

3 (2012) 3 SCC 619.

4 2012 (2) GLR 1156.

The court must be satisfied that the process of PIL is not being abused by politicians or other busy bodies for political or unrelated objective. The person approaching the court has to come with clean hands, clean heart and clean objectives.

The high court held that that PIL may be initiated either upon a petition filed or on the basis of a letter or other information received, but upon satisfaction that the information laid before the court was of such a nature which required examination. The high court opined that every default on the part of the state or public authority is not justiciable in PIL.

As regards the present case, the high court observed that a PIL will not lie merely because people of city of Surat have strong sense of association and reorganization with hope bridge as it is a very important heritage and historic place in the development of the city and its suburbs. The court reasoned that public interest cannot be equated with public sentiments or public emotions, and that in the exercise of PIL jurisdiction; the court cannot get swayed away by public sentiments or public emotions. The fact that Hope Bridge was constructed some 134 years ago and is an important heritage and historic landmark of Surat city, being the first bridge over river Tapi and being a magnificent example of wrought iron structure of great engineering importance, could not, by itself, invest the bridge with such importance regarding its utility, with the passage of time, as to give it a status of irremovability. The high court took the view that though the petitioners did have a sufficiency of interest to sustain their standing to sue, the issue raised by them was non-justiciable. Accordingly, the high court declined to intervene in the matter.

In *State of Madhya Pradesh v. Bheru Singh*,⁵ the Supreme Court held that the jurisdiction of PIL cannot be pressed into service where matters have already been completely and effectively adjudicated upon in earlier petitions. The Madhya Pradesh High court had already considered and decided the question of the implementation of the rehabilitation and re-settlement policy, which litigation had culminated in the apex court. The Supreme Court, therefore, held that the high court was not correct in yet again entertaining a writ petition by way of a PIL on the same question.

In *New Kattalai Canal and Aerie Pasana Vivasayigal Welfare Association, K. Sathanoor, v. Union of India*,⁶ the Madras High Court took the view that the PIL jurisdiction under article 226 of the Constitution did not empower the court to ignore or substitute the opinion given by the experts based upon relevant materials placed before them.

III PROCEDURAL LAW

In *Avishek Goenka v. Union of India*,⁷ the Supreme Court had, by its judgement of 27.4.2012, interpreted rule 100 of the Motor Vehicles Rules, 1989 to pass directions in the PIL relating to prohibition on use of films on safety glasses. Subsequently, applications were filed seeking clarification and modifications, *inter*

5 AIR 2012 SC 1062.

6 (2012) 1 MLJ 207.

7 AIR 2012 SC 3230.

alia, on the ground that proper notice had not been issued to the applicants. Dismissing such applications, the Supreme Court held that its directions issued in PIL were operative *in rem*, and that it was neither expected of the court nor was it the requirement of law that the court should have issued notice to every shopkeeper selling the films, every distributor distributing the films and every manufacturer manufacturing the films. The Supreme Court further observed that PIL was a widely covered matter by the press, and that it was incumbent upon the applicants to approach the court, if they wanted to be heard at that stage.

In *Union of India v. Rafique Shaikh Bhikan*,⁸ the special leave petition related to certain issues raised by private tour operators of the Haj pilgrimage. The Supreme Court, finding it to be a matter requiring wider examination of entire Haj Policy of central government, treated the special leave petition as an PIL on the ground that it related to a matter of public importance and required a broader scope of judicial examination.

In *Ayub Khan v. State of Kerala*,⁹ the grievance for the advocates before the Kerala High Court was that it was the registry which was considering the maintainability of various cases filed in the court and that where the registry found a case as not being maintainable, it was refusing to number the same or to post the case before the court despite request by the counsel. The high court held that while the registry is free to consider the maintainability of a case and is free to record reason and refuse to number the same without orders from bench, it is duty of registry to send unnumbered case to the court where the party or counsel filing the case requires the question of maintainability to be adjudicated by the court on the judicial side.

IV *SUO MOTU* PIL

In *Suo Motu v. State of Gujarat*,¹⁰ the Gujarat High Court took *suo motu* notice from a letter addressed by the head of, Peoples Training and Research Centre to the chief justice of the high court detailing the plight of the workers engaged in a chemical manufacturing unit in Mehsana, who were exposed to fine dust of some polymers resulting in lung diseases, one of which was pneumothorax. The high court, while reiterating that the right to health and medical care to protect health of workers is a fundamental right within article 21 of the Constitution, issued directions *inter-alia*, to provide medical treatment to workers and to protect them from further exposure. The court further directed the state government to survey the factories in the state that expose workers to health hazards and to take adequate measures to safeguard the health of workers.

In *Court on Its Own Motion v. State of Maharashtra*,¹¹ the Bombay High Court took *suo motu* notice of an unauthorized construction in Nagpur by dr. Punjabrao Deshmukh Krishi Vidyapeeth. A communication centre and other structures had been constructed in the land in question meant to be used by students of the

8 (2012) 6 SCC 265.

9 2012 (1) KLJ 715.

10 2012 (2) GLR 1178.

11 2012 (1) Mh. L.J. 232.

agriculture college to carry out experiments in agriculture. Terming the land as the “lungs of the city”, the high court upheld the notice of demolition of the authorities and directed demolition of the illegal construction. The high court further required the planning authority of Nagpur to undertake a study and determine the optimum standard of open space per capita and to submit the report within a period of one year.

V RULE OF *LOCUS STANDI*

In *Girish Vyas v. State of Maharashtra*,¹² the Supreme Court confirmed the standing of the petitioners to challenge the building permission issued by Pune Municipal Corporation for private residences on a plot reserved for a public purpose, namely, a primary school. The court noted that “access to justice being a fundamental right and citizen’s participatory role in the democratic process itself being a constitutional value, accessing the court will not be readily discouraged. Consequently, when the cause or issue relates to matters of good governance in the Constitutional sense, and there are no particular individuals or class of persons who can be said to be injured persons, groups of persons who may be drawn from different walks of life, may be granted standing for canvassing the PIL”.

In *New Kattalai Canal and Aerie Pasana Vivasayigal Welfare Association, K. Sathanoor; v. Union of India*,¹³ the Madras High Court upheld the *locus standi* of the petitioner to file the PIL pertaining to preservation of water bodies, observing that when the issue is of public importance, the court will examine the same and decide it on its merits, even if there is a private interest involved.

In *Thol. Thiruma Valavan v. State of Tamil Nadu*,¹⁴ the Madras High Court allowed the PIL seeking transfer the investigation to the Central Bureau of Investigation in a case where six dalit community members had died due to police firing and lathi charge. The high court accepted standing of the petitioners, who were not to aggrieved persons, to maintain the PIL since it was filed to raise voice to protect the interest and rights of oppressed sections of society.

In *Satish Kumar v. State of U.P.*,¹⁵ the Allahabad High Court declined to de-list the petitioner from array of parties, while observing that the petitioner had disclosed that he was a passionate social worker on issues relating to farmer’s rights, and that further, nothing was brought on record by the state to establish that the petitioner was not acting in *pro bono publico* spirit.

In *Jay Shankar Pathak v. Election Commission of India*,¹⁶ the Jharkhand High court denied standing to the petitioner in a PIL which challenged the decision of the Election Commission to rescind the election notification in view of allegations of use of money power and horse trading. The court observed further that the petitioner, a member of the political party, had himself admitted that money had been

12 *Supra* note 3.

13 *Supra* note 6.

14 2012 (3) MLJ 572.

15 2012 (10) ADJ 413.

16 AIR 2012 Jharkhand 58.

used for the election shamelessly and without fear, and had failed to show as to how the image of state of Jharkhand could improve by declaration of result of election.

VI ADMINISTRATIVE AND POLICY MATTERS

In *Networking of Rivers, In Re*,¹⁷ the Supreme Court passed a series of orders relating to the implementation of the Interlinking of River (ILR) Programme, which would help save people living in drought-prone zones from hunger and the people living in flood-prone areas from the destruction caused by floods. The court noted that various expert bodies had listed the immeasurable benefits of ILR Programme for economic growth, health, environment and for controlling flood-drought paradox, and that there was unanimity between the central government and all state governments except a few reservations, that the project should be carried out more effectively and with greater sensibility even if there were difficulties in preparation, execution, financing and consensus building.

On the scope of judicial review in such matter, the apex court held that it could not sit in judgment over opinions of experts or take upon itself tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like the need for acquisition and construction of river linking channels under the programme. Opining that the Supreme Court may not be a very appropriate forum for planning and implementation of such a programme having wide national dimensions and ramifications, the court directed the Ministry of Water Resource, government of India to constitute an expert committee for planning and implementation of the programme. The court directed such committee to hold meetings every two months (without any adjournment for absence of its members), form sub-committees whenever necessary, submit biannual reports, peruse status reports, prepare and implement phase wise plan and so on so forth. The governments, both central and state, were directed to render all financial and administrative help to complete ILR programme. The court further acknowledged the importance of taking help of the internet in preparation of feasibility reports so that the experts on the interlinking of rivers constituted by the government could put their viewpoints on website for consideration.

In *Mange Ram v. Union of India*,¹⁸ the Delhi High Court declined to restrain the authorities from constructing a foot over bridge near a residential colony on the ground that the decision to construct or not to construct the foot over bridge at a particular site was purely an administrative and executive decision. The court found that the petitioner was *prima facie* in illegal encroachment of land, and that where such land was required for construction of the foot over bridge in public interest and in public good, the court cannot disregard the interests of the general public and other residents of colony.

In *Centre for PIL v. Union of India*,¹⁹ the PIL before the Delhi High Court sought directions with regard to a project for construction of railways link between Katra and Quazigund section in Jammu and Kashmir. The petitioner was aggrieved

17 2012 (3) SCALE 74.

18 188 (2012) DLT 196 (DB).

19 193 (2012) DLT 329 (DB)

on the ground that the railway board did not consider its representations seeking re-alignment of the railways line, citing an alternate proposal made by its chief engineer after detailed study. The high court declined to intervene in the matter on the ground that it raised technical issues as well as policy matters. However, the court gave petitioner the liberty to make a representation to board and directed the board to consider the same as also the earlier representations and to respond within a given time.

In *Joachim Carvalho v. Union of India*,²⁰ a PIL was filed before the Delhi High Court by a former member of the Indian hockey team on the ground that hockey players of eminence were being subjected to threats and were being prevented from participating in a world class hockey tournament being organized in the country. The high court disposed of PIL with observations that the domestic event should be arranged in such a manner that it does not come in conflict with preparatory camps or the period when the international events are going to be held.

In *J.S. Bindra v. State of Gujarat*,²¹ the Gujarat High Court declined to go into the merits of the controversy as to whether or not a 134-year old Hope Bridge in the city of Surat requires to be pulled down or deserves to be repaired and preserved as an important heritage and historic landmark. The court, while dismissing the PIL held that “judicial review is no method of inquiring into the wisdom, expediency or reasonableness of administrative acts. It is true that administrative decisions must not be unreasonable or, at least, not so unreasonable that no reasonable authority could have arrived at that decision. That is one facet of perversity. But, it is unreasonable to assume that because another party disagrees with one’s own view of the matter; his or her view is, necessarily, unreasonable”. The court reiterated that unless the policy decision is *malafide* or in conflict with law, it will not be in public interest for the courts to interfere. After going through the materials on record, particularly, the report of the expert body as regards the feasibility of repairing the hope bridge and making it functional, the high court held that court is not a technical expert to overrule the technical opinion given by engineers and technocrats to dismantle the bridge. Whether or not the hope bridge should be repaired and preserved as a heritage structure, or whether it should be dismantled taking into consideration other relevant factors like damage which may be caused to the adjoining Nehru Bridge, is a policy decision which is the function of the executive.

In *Sudhir C. Shah v. Gujarat Urja Vikas Nigam Ltd. Through Managing Committee*,²² the PIL before the Gujarat High Court sought that the authorities choose CRGO transformers in preference to amorphous transformers. The high court, while dismissing the PIL, held that the court does not have the expertise on the subject and it was for an expert body to consider all the aspects which, the high court found, it had done.

In *Jagega Gujarat Sangharsh Samiti v. State of Gujarat*,²³ the Gujarat High Court dismissed the PIL challenging the restrictions on the use of vehicles and regulation of traffic in a vehicle-free zone.

20 187 (2012) DLT 524 (DB).

21 2012 (2) GLR 115.

22 MANU/GJ/1120/2011.

23 2012 GLR (3) 470.

In *Shamshad Pathan, Convener v. State of Gujarat Through Secretary*,²⁴ the PIL preferred by a civil right organization before the Gujarat High Court challenged the legality and validity of a government resolution issued by its education department. By the said resolution, a decision was taken that the question papers for the examinations of Secondary School Certificate and Higher Secondary School Certificate for the subjects other than the languages shall be prepared in Gujarati, Hindi and English languages and the students of Secondary School Certificate can answer the question papers of the examination alternatively in English, Gujarati, Marathi, Urdu, Hindi, Sindhi, Tamil or Telugu languages whereas the students of Higher Secondary School Certificate examination could answer the question papers only in Gujarati, Hindi or English language. The high court declined to entertain the PIL, holding that it was a question of educational policy or an issue involving an academic matter. The court held that where the state “desires to bring about academic discipline as a regulatory measure, it is a matter of policy” and that the state “knows how best to implement the language policy”.

In *Chaudhary Laxmanbhai Parthibhai v. State of Gujarat*,²⁵ the issue raised in the PIL before the Gujarat High Court was whether it was lawful for the state government to resume any land, including grazing land, vested in the panchayat for public purpose without obtaining consent of the concerned panchayat. The Gujarat High Court dismissed the PIL holding that unless the policy decision was absolutely capricious and not informed by any reason, the court should not outstep its limit and tinker with policy decision of the authorities.

In *Prakash Industries Ltd. v. Union of India*,²⁶ the Chhattisgarh High Court allowed the PIL challenging the validity of an order suspending the supply of coal to purchasers on the ground that purchasers diverted coal supply. Such challenge was premised on ground that the order had been passed in violation of the principles of natural justice, and that further the relevant fuel supply agreement did not even provide for suspension of supply of coal.

VII PIL AND SERVICE MATTERS

In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*,²⁷ the Supreme Court reiterated its consistent view that a course of action in form of a PIL is not permissible as far as service matters are concerned.

VIII PIL ALLEGING ARBITRARY STATE ACTION

In *Manohar Joshi v. State of Maharashtra*,²⁸ the Supreme Court upheld the decision of the Bombay High Court allowing a PIL challenging the illegal construction of a residential complex on land reserved for a public amenity by the son-in-law of the state’s chief minister. The court cancelled the permission granted

24 2012 (2) GLR 1364.

25 2012 (3) GLR 2735.

26 AIR 2012 (NOC) 248 (Chh).

27 AIR 2013 SC 58.

28 *Supra* note 3.

by the state for such construction and directed demolition of illegal residential complex. Rejecting the contention that the PIL was hit by laches, the Supreme Court held that the delay was inconsequential in view of the *mala fides* and favouritism on part of the government officials. While there could be no direct evidence of officers being pressurized by the chief minister, one has to rely on inferences which have to be drawn on the basis of probabilities. The court found that the very manner in which the matter had been handled by the authorities made the intention of chief minister clear.

In *Khetshi Hirji Shah v. State of Gujarat*,²⁹ the PIL before the Gujarat High Court related to the surplus of the land which had been acquired by the state for public purpose but which was being disposed of by gram panchayats after raising construction thereon. The high court held that the surplus of land acquired for public purpose belonged to the state government and could be used for genuine public purpose only, and that the gram panchayats had no authority under law to dispose of land in favour of individuals or institutions. The court, therefore, issued directions for removal and demolition of all constructions and for the restoration of the land to its original position.

In *Mahisagar Mataji Samaj Seva Trust v. State of Gujarat*,³⁰ the PIL before the Gujarat High Court on behalf of the maldharis (cattle owners) pertained to the high handed and arbitrary action on the part of the authorities in not releasing cattle impounded under the provisions of the Cattle Trespass Act, 1871. The grievance of the petitioner was that whenever the cattle owner approaches the authorities for release of his cattle on payment of fine as contemplated by the Act, the authorities do not release the cattle on the pretext that the cattle would be released only after some forthcoming festival is over. The authorities sought to justify the detention of such cattle beyond the time prescribed under the Act on the ground that during the period of important festivals, such cattle cause lot of inconvenience and nuisance to the general public at large.

The high court held that the authorities were duty bound to follow the law which has been prescribed under the Act, which required them to deliver the impounded cattle to the claimant on payment of fines and charges incurred in respect of such cattle. If such cattle was once again found straying on public roads, then it was always open for the authorities to seize the same. While public nuisance must be taken care of, the same must be taken care of only in accordance with law. The high court disposed of the PIL by requiring the authorities concerned to strictly abide by the provisions of the Cattle Trespass Act, 1871 and directing all District Magistrates of the state of Gujarat to ensure such compliance.

IX PIL AND RIGHT TO LIFE

In *People's Union for Civil Liberties (Night Shelter Matters) v. Union of India*,³¹ the Supreme Court reviewed the state-wise situation regarding the night shelters and expressed its view of seriousness of such problem and that it needed to be

29 2012 (3) GLR 2164.

30 2012 (2) GLR 1300.

31 (2012) 11 SCC 422.

addressed. The court observed that there should be adequate publicity, both in print and electronic media, about existence of permanent and temporary night shelters to be given so that needy people could have some respite and save their lives. The court took judicial notice of news reports depicting plight of patients and their relatives who were compelled to spend nights in severe and biting winter without a roof over their heads in the All India Institute of Medical Sciences, New Delhi. Further, the court issued directions to district magistrates and collectors concerned to collect information about homeless people in their districts and submit the same before the chief secretaries of the states and the union territories concerned, who in turn were directed to file affidavits indicating, with details, the number of permanent and temporary night shelters in existence, provisions of basic amenities and basic medical facilities and occupancy rates.

In *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*,³² the PIL before the Supreme Court, *inter-alia*, sought that free and proper medical assistance be provided to the victims of the Bhopal gas tragedy by the authorities. The petitioners also sought privatization of the research work and expanding the scope of Empowered Monitoring Committee by bringing within its jurisdiction the private hospitals / clinics where the gas victims may go for treatment. The petitioners also sought that direction be given to the authorities to provide free medicines, prepare a detailed plan of medical rehabilitation, conduct research studies by ICMR and to make public the reports published by it so as to provide the basis for issuance of appropriate directions by the court.

The court held that there was no justification or need for bringing the private hospitals/clinics within the jurisdiction of the Empowered Monitoring Committee. As regards the other reliefs, the court referred to its various orders directing certain effective and positive steps to be taken by authorities to ensure providing of appropriate medical treatment to the gas victims. The court issued detailed directions in order to ensure proper progress and implementation of the 'Relief and Rehabilitation programme' for the gas victims as well as to ensure that the research work is result-oriented and continued with exactitude. These directions included measures for better and effective control in the case by the Madhya Pradesh High Court; measures for proper functioning of the 'Relief and Rehabilitation Programme' and measures for provision of accessible, proper and adequate office space and infrastructure for the monitoring committee and the advisory committee to enable them to perform their functions effectively. While holding that the Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the hospital, *i.e.* BMHRC as well as other government hospitals dealing with the gas victims, the court clarified that the Empowered Monitoring Committee shall have no jurisdiction over the private hospitals, nursing homes and clinics in Bhopal. However, that would not absolve the state of Madhya Pradesh and the Medical Council of India from discharging their responsibilities towards the gas victims who were being treated in private hospitals, nursing homes or clinics.

32 AIR 2012 SC 3081.

The court, while passing directions to ensure proper research, held that the Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of 'health booklets' and so on so forth. The Monitoring Committee must also ensure that the 'health booklets' and 'smart cards' are provided to each gas victim, irrespective of where such victim is being treated. This direction was to apply to all the hospitals run by the government or otherwise, in Bhopal. The court further directed for complete computerization of the medical information in the government as well as non-government hospital/clinics, to be completed within period of three months from the date of the order. The state government was directed to provide assistance in all respects to the Empowered Monitoring Committee and to take appropriate action against the erring officer/officials in the event of default.

In *Networking of Rivers, In Re*,³³ the PIL before the Supreme Court related to the implementation of the Interlinking of River (ILR) Programme, which would help save people living in drought – prone zones from hunger and the people living in flood- prone areas from the destruction caused by floods.

On the scope of judicial review in such matter, the court held that a PIL in the Supreme Court has to fall within the contours of constitutional law. While the jurisdiction of the court would be ousted with regard to adjudication of disputes specified in article 262 of the Constitution, the Supreme Court could certainly direct central government to fulfill its statutory obligation under the Inter-State River Water Disputes Act, 1956. The court stressed the importance of consensus building measures to be taken by the central and state governments for the Programme. Some states desired that projects should be implemented by the central government, others desired *quid pro quo* in water transfer *i.e.* transfer of water from surplus basins to deficit basins. The court explained that the reservations of the states cannot be ignored because they relate to their peculiar economic, geographical and socio-economical needs. On the other hand, the states should put forth their objections with a spirit of service to nation, objectively and rationally and should not put any ill-founded objections which might harm their neighbouring states. Emphasizing that national interest must take precedence over interest of individual states, the court held that a greater element of mutuality and consensus needs to be built between the states and the centre on the one hand, and the states *inter se* on the other. The court recalled its own limitations in undertaking such an exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of PIL.

X PIL AND ENVIRONMENT

In *Aruna Rodrigues v. Union of India*,³⁴ the PIL before the Supreme Court sought a total ban on the field tests of genetically modified organisms (GMOs) and prayed for constitution of an expert committee and the framing of its terms of reference. The court found that the authorities had taken steps for constitution of an

33 *Supra* note 17.

34 (2012) 5 SCC 331.

expert committee and formulated the terms of its reference. Accordingly, the court, after determining the issues to be decided by the expert committee, directed it to submit the final report within a period of three months.

In *Yakubhai Sharifbhai Aglodiya v. Collector and District Magistrate, Sabarkantha*,³⁵ the Gujarat High Court, relying on the established principle that right to life in article 21 of the Constitution included the right to live in pollution free atmosphere, directed Gujarat Pollution Control Board to immediately frame guidelines for prevention and control of air and water pollution. The court observed that since the board was obliged to prevent and control air and water pollution, it had sufficient power for that purpose, including the power to order closure and relocation of the polluting unit. The high court, thus, allowed the PIL complaining against the operations of a stone crushing (quarry) unit at a distance less than one kilometre from a residential locality.

In *Ranubha Rajmalji Jadeja v. Union of India*,³⁶ the PIL filed by the farmers before the Gujarat High Court complained that was that since the Mundra Port and Special Economic Zone (MPSEZ) itself had not been granted environmental clearance under the Notification of 2006 by the Central Government, an unit set up within the MPSEZ, as a lessee of the MPSEZ, could not proceed with the construction work irrespective of the fact whether such individual unit was required to obtain separate environmental clearance or not.

As regards the question of individual unit obtaining independent permission was concerned, the court held that the Notification of 2009 was clear that only those projects involving operation of furnaces such as induction and electric arc furnace, submerged arc furnace, and cupola with capacity of more than 30,000 tonnes per annum would require environmental clearance and the unit in question did not fall within that category. Accordingly, the unit independently was not obliged to obtain environmental clearance from the authority concerned so far as their project was concerned. The court held that, notwithstanding this position, the said unit could not proceed further with the construction work in the absence of any environmental clearance being given to the MPSEZ. The court reasoned that the law envisaged that no construction, preliminary or otherwise, could be undertaken without environmental clearance and, therefore, there was no reason the said unit should be permitted to go ahead with their project in the absence of such clearance.

In *Jan Chetna v. Ministry of Environment and Forests*,³⁷ the grievance of the petitioner before the Delhi High Court was that the authorities had given environment clearance to a company for setting up of integrated steel plant without completing the process of public hearing and on the basis of faulty Environment Impact Study; and that, further, the procedure prescribed in the Environment Impact Notification of 2006 had not been followed. The National Environment Appellate Authority had dismissed the appeal of the petitioner, treating it not to be the aggrieved person. The high court, however, construed the provisions of the National Environment Appellate Authority, 1997 to hold that the expression “aggrieved person” used

35 2012 (3) GLR 2099.

36 2012 (2) GLR 1450.

37 189 (2012) DLT 550 (DB).

therein denotes elastic, and to an extent, an elusive concept and has to be given the widest operation as the language will permit. Accordingly, it was held that an organization working in the area in question, closely following issue of setting up of industries and the impact thereof on the environment, would be a person aggrieved and entitled to exercise of the right to appeal. Consequently, the high court remanded the appeal to the NEAA and/or its successor for decision on merits.

In *New Kattalai Canal and Aerie Pasana Vivasayigal Welfare Association, K. Sathanoor v. Union of India*,³⁸ the PIL before the Madras High Court had challenged the proposed road alignment for a by-pass project wherein the highway was to pass over two tanks and agricultural lands which could have an impact on water resources and agricultural operations. The court held that the issue regarding the preservation of tank was adequately addressed in the case by the reports furnished by the experts. Further, the government of India had, while acquiring the lands, followed the procedure contemplated under the National Highways Act, 1956 and had called for objections. However, no such objections were raised at that time. In this case, admittedly the farmers whose lands had been acquired did not challenge the proceedings. The petitioner could not espouse the cause of the individual farmers in a PIL. The court further observed that “a Court of law has to strike a balance between the development activities by following the principle of sustainable development as against maintaining the environmental balance.” The court declined the PIL, holding that in this case, the viability and feasibility of the project done in larger public interest did not warrant any interference.

XI MISUSE OF PIL

In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*,³⁹ the PIL before the Bombay High Court had challenged the caste certificate of a person. The high court had, without going into the merits, remitted the matter to the Caste Certificate Scrutiny Committee with a direction to hear all the parties concerned and to decide the matter. On appeal by the affected person, the Supreme Court imposed a cost of rupees one lakh on writ petitioner for filing the PIL *malafide* and without any public interest. The Supreme Court reiterated that it has consistently cautioned the courts against entertaining PIL filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. According to the court, “the right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a Visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the

38 *Supra* note 6.

39 AIR 2013 SC 58.

subjective purpose of the *lis* justifies the need for it.”

In *Shalkhan Murmoo v. State of Jharkhand*,⁴⁰ the petitioner before the Jharkhand High Court, who was a former member of Parliament, alleged that the state chief minister and the revenue minister had acted illegally by suspending an order requiring authorities to implement the provisions of section 46 (1) of Chhotanagpur Tenancy Act that restricted the transfer of land belonging to members of scheduled caste, scheduled tribes and other backward classes. The petitioner sought a declaration that the state chief minister and the revenue minister should cease to hold their posts. The Jharkhand High Court, while observing that the petitioner would not have sought such declaration if he had any *bonafide* intention, dismissed the PIL.

In *Jay Shankar Pathak v. Election Commission of India*,⁴¹ the PIL before the Jharkhand High Court filed by a member of a political party challenged the decision of the Election Commission of India whereby the Election Commission had stayed the counting of votes in the biennial election to the Council of States due to allegations of use of money power and horse trading of members of the legislative assembly. The high court dismissed the PIL as being against public interest and imposed a cost of rupees one lakh on the petitioner.

In *Sudhir C. Shah v. Gujarat Urja Vikas Nigam Ltd.*,⁴² the PIL before the Gujarat High Court challenged a tender notice alleging that a loss of rupees 120 crores was likely to be suffered by the government exchequer by virtue of the decision of the authorities to acquire amorphous transformers instead of CRGO transformers. The high court found during the proceedings that the petitioners lacked *bonafides* and were acting at the instance of persons interested in CRGO transformers. The court dismissed the PIL with costs of rupees 25,000, while reiterating that PIL filed for extraneous considerations should be discouraged and curbed.

In *S. Bhoopathy v. Government of Tamil Nadu*,⁴³ the petitioner filed a PIL before the Madras High Court seeking eviction of respondents from Odai *poramboke* land. The court found the PIL to be motivated by enmity and vested interests. Noting that PIL has evolved for the welfare of people who are in disadvantaged position and are unable to knock doors of court, the court dismissed the PIL with costs of rupees two lakhs to be deposited by the petitioner before the Tamil Nadu State Legal Services Authority.

In *S.P. Muthu Raman v. Chief Secretary, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai*,⁴⁴ the PIL before the Madras High Court alleged that government offices were conducting religious activities like Saraswathy pooja and Ayutha pooja, and contended that this would be a threat to secularism. The high court dismissed the PIL as being misconceived. The court observed that admittedly the state does not perform Saraswathy Pooja or Ayutha Pooja but had merely declared holidays for two days so as to enable individuals to celebrate or perform pooja by themselves. Further, the petitioner had not specifically stated in

40 AIR 2012 Jharkhand 54.

41 AIR 2012 Jharkhand 58.

42 2012 (2) GLR 1364.

43 (2012) 1 MLJ 554.

44 (2012) 2 MLJ 647.

which government office, the said poojas was or is celebrated by the government. The court observed that even otherwise, the two poojas referred to by the petitioner cannot be termed as religious activities in its strict sense. It was only a respect shown to the objects of one's profession or occupation. The respect shown to office file, reading materials, office utilities which were being used day –to –day by the person or the official concerned could not be termed as offending the secular nature of the state.

In *Ramaswamy alias Traffic Ramaswamy v. Government of Tamil Nadu*,⁴⁵ the Madras High Court dismissed the PIL filed to restrain a construction company from raising construction of multistoried building. The court observed that the petition could not be entertained as a PIL as no real public interest was involved in the case.

XII PIL AND ALTERNATIVE REMEDIES

In *Common Cause v. Union of India*,⁴⁶ the PIL sought for the issuance of a writ of mandamus, requiring the President of India to make a reference to the Supreme Court under section 5 (2) of the Protection of Human Rights Act, 1993 for holding an enquiry against the Chairman of the National Human Rights Commission. The Supreme Court declined to accept the prayer made by the petitioner on the ground that the first step contemplated under section 5 (2) of the 1993 Act is the satisfaction of the President of India. It is only upon the satisfaction of the President, that a reference can be made to the Supreme Court for holding an enquiry. However, since a series of allegations were leveled against the Chairman of the National Human Rights Commission in the communication dated 4.4.2011 addressed by Campaign for Judicial Accountability and Reforms, to the President of India and Prime Minister of India, the court disposed of the PIL by requesting the competent authority to take a decision on the communication dated 4.4.2011 and should the allegations, in the aforesaid determination, were found to be unworthy of any further action, to inform the same to the petitioner accordingly.

In *Manohar Lal Sharma v. Union of India*,⁴⁷ the PIL before the Supreme Court also sought an enquiry against the Chairperson of National Human Rights Commission and requested that the Government be directed to advice the President to make reference to Supreme Court for conducting such enquiry. The court disposed of the PIL, observing that there was no provision on basis of which the petitioner could directly approach Supreme Court, and that the petitioner should approach the competent authority under Section 5 (2) of the Protection of Human Rights Act 1993.

In *Virendra Pratap v. Union of India*,⁴⁸ the PIL before the Supreme Court sought that Scheduled Tribes be proportionally represented in light of new inclusions in the list of scheduled tribes by Scheduled Castes and Scheduled Tribes Orders

45 AIR 2012 (NOC) 249 (Mad).

46 (2012) 11 SCC 600.

47 (2012) 11 SCC 422.

48 (2012) 11 SCC 764.

(Amendment) Act, 2002. The court, however, directed Election Commission of India to consider the case of the Scheduled Tribes, and take appropriate steps for their representation in the Lower Houses, both in Parliament as well as in the state assemblies, in accordance with provisions of Constitution for due representation of scheduled tribes population based on census figures of 2001.

In *Shesh Dutt Pandey v. State of U.P.*,⁴⁹ the Allahabad High Court, declined to entertain a PIL filed for removal of encroachment over the gram sabha land, especially when in this case, proceedings under statutory provisions were pending in respect of the disputed land.

In *C. Rajaram, Advocate v. GNCT of Delhi*,⁵⁰ the PIL was filed before the Delhi High Court by an advocate complaining that various authorized car dealers in Delhi were coercing the purchasers to pay amounts over and above the registration charges which they have been authorized to collect, and that such action was in violation of the instructions and guidelines of the state transport department. The court found that it was open to the purchaser of a vehicle not to register the vehicle through the dealer from whom he has purchased the vehicle. The purchaser could, instead, register it with office of licensing authority. The car dealers justified extra charges for providing services, goods and fuel to the purchasers. The high court declined to intervene in the matter and disposed of the PIL with the direction that in the event of the authorities receiving any complaint against any vehicle dealer charging anything extra or a commission from the vehicle purchaser for providing the services of registration, the authorities shall enquire into the said complaint and if they find any merit therein, they shall take action in accordance with law against such vehicle dealers.

In *O.S. Bajpai v. Administrator LT. Governor*,⁵¹ the grievance raised by the petitioner before the Delhi High Court was that despite directions being passed way back in 2010 in a PIL to make the Delhi Apartment Ownership Act, 1986 workable, the benefits of the Act had not percolated to the apartment owners till 2012. The high court had, in 2010, passed directions for amendment or replacement of the Act and had kept the matter pending to ensure compliance. The issue in the present PIL was, *inter-alia*, regarding such compliance including the delay in execution of deeds of apartment by the promoter/builder. The high court declined to entertain the PIL, holding that such question should be adjudicated either in a suit for specific performance, or in arbitration if provided for in the allotment/possession letter of apartment.

In *Patel Vipulkumar Ramjibhai v. Union of India*,⁵² the Gujarat High Court held that the rule of exclusion of writ jurisdiction on account of availability of alternative remedy does not operate as an absolute bar to entertain a PIL, and discretion can be exercised to entertain a petition if facts so require. The high court, accordingly, allowed the PIL complaining of the expansion of an undertaking without the mandatorily required public hearing, and directed the closure of the unit in question.

49 2012 (6) ADJ 266.

50 190 (2012) DLT 569 (DB).

51 194 (2012) DLT 138 (DB).

52 2012 (3) GLR 2312.

XIII CONCLUSION

The survey indicates that PIL has, indeed, served as an effective mechanism in enabling the courts to take a pro-active role in protecting the fundamental rights involved in the cases covered in the survey. However, most of these cases relate to the ‘diffuse, collective and meta-individual’ rights of the public at large and to provide redress for the breach of public duties owed to them, in contradistinction to the fundamental rights of a person or a determinate class of persons who, by reason of poverty, helplessness or disability, lack access to the judicial process. A perusal of the successive annual surveys on PIL will reveal that the remedial mechanism of PIL is being used more for the former kind of rights than the latter. This stands in sharp contrast for the purpose for which PIL was initiated in this country.

The first PIL in the country, *Hussainara Khatoon v. State of Bihar*⁵³ (known as the *Undertrial Prisoner’s* case) pertained to the illegal detention of thousands of prisoners in jail awaiting trial for periods substantially longer than the period they would have served in jail had they been tried, convicted and given maximum sentence. The Supreme Court, while releasing about 40,000 prisoners on personal or no bond, read a “right to speedy trial” as being implicit in the fundamental right to life and liberty guaranteed in article 21 of the Constitution. *Hussainara Khatoon’s* case set the pattern which was adopted by the court in subsequent cases. In addition to the non adversarial nature of this litigation and the absence of the traditional *lis*, other characteristic of PIL exemplified by *Hussainara Khatoon’s* case include the typical sprawling and amorphous structure of the parties to the litigation; the active role of the judge; the releasing of the petitioner from the burden of proving the alleged facts; the acceptance of press reports as the basis of petitions; the grant of immediate and interim remedial relief once a *prima facie* case is made out; the reliance on unenforceable Directive Principles of State Policy in part IV of the Constitution to read new implied rights into the expressly enumerated fundamental rights guaranteed by part III of the Constitution; the relaxation of the rule of *locus standi* to confer standing on any person, acting *bona fide*, to approach the court for vindication of the rights of the disadvantaged sections of the society.

Hussainara Khatoon’s case led to perhaps the most horrifying PIL case of *Anil Yadav v State of Bihar*⁵⁴ (known as the *Bhagalpur Blindings* case) which related to many suspected criminals being blinded by the police in custody by poking needles and cycle spokes into their eyes and then pouring acid into the eyes. In judgements seething with anger and anguish, the Supreme Court condemned the police for what it aptly described as “a crime against the very essence of humanity”. The court, through interim orders, quashed the trial of the blinded prisoners, directed the state to fund their medical treatment and rehabilitation, granted each prisoner a life pension and directed speedy prosecution of the guilty policemen and jail officers involved in the “barbaric act for which there is no parallel in civilized society”.

53 AIR 1979 SC 1360, 1369, 1377. Also see U. Baxi, *The Supreme Court Under Trial : Undertrials and the Supreme Court*, (1980) 1 SCC 35.

54 AIR 1982 SC 1008. See also Khatri v State Of Bihar, AIR 1981 SC 928, 1068.

This case established another aspect of the non adversarial nature of PIL; that is investigative or inquisitorial litigation, with the Registrar of the Supreme Court being deputed to visit Bhagalpur to investigate the facts.

The reference to just these two PIL will suffice to highlight the purpose for which PIL was originally conceived – that is, to protect the fundamental rights of the poor, disabled and disadvantaged lacking access to court. It was in *S.P. Gupta v. Union of India*⁵⁵ that the scope of PIL was subsequently expanded to include cases involving “diffuse, collective and meta-individual rights” of the public at large and breach of the public duties owed to them was expanded.

Given that each member of public would necessarily be affected by the violation of the “diffuse, collective and meta-individual rights” of the public at large, cases relating to such rights could well have been litigated within the traditional common law jurisprudence as class actions or representative actions under order 1 rule 8 CPC 1908, complete with the check and balances of the common law system on the judicial role.

Class action or representative action is not PIL inasmuch as requires the judge to be a neutral umpire in the action involving a *lis*; it is adversarial in nature; it requires the court to consider only those legal issues which are raised before it; it mandates that the court must observe procedural technicalities such as issuing notice to all the community members; it must be filed in the first instance in the trial court and requires development of detailed evidentiary evidence at that level. These requirements are imperative not only to facilitate proper adjudication but also to weed out a busybody or an unscrupulous litigant from misusing the judicial process.

The implication of litigating a matter as a PIL which could also have been litigated as a class action or a representative action lies in the court being relieved of such limitations of the common law jurisprudence. Moreover, such expansion of the scope of PIL also results in enabling a litigant to file a PIL ostensibly in public interest but, in fact, to serve personal or private interest or with an oblique or extraneous motive, or merely for publicity. The current trend of PIL matters shows that it is precisely these kind of cases that are being consistently filed as PIL in the courts today. Such cases increase the docket of the court and lead to wastage of court time and resources, at the cost of genuine pending cases. Imposition of costs for misuse of PIL is not really proving to be a deterrent to the unscrupulous litigant.

Since the instrument of PIL is being blunted by engaging the courts in cases that could have been litigated as class action or representative action, it is the poor, disabled and the disadvantaged who have lost out – precisely those persons for whom PIL was originally conceived. It is; perhaps, time to reconsider whether the remedy of PIL should be confined to only those actions which are brought to protect the fundamental rights of the poor, disabled and disadvantaged.

55 AIR 1982 SC 149.