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PUBLIC INTEREST LITIGATION

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I INTRODUCTION

THE YEAR 2013 marked the passing away of Pushpa Kapila Hingorani, popularly known as the mother of PIL. The Chief Justice of India, at the Full Court Reference held in the Supreme Court, stated: [1]

> The landmark case which saw the emergence of public interest litigation in India, later known to every law student in India as Hussainara Khatoon case was the first PIL in India. Mrs. Pushpa Kapila Hingorani was the first Indian lawyer to file a PIL on behalf of prisoners awaiting trial in the jails of Bihar for a period longer than the sentence supposed to be imposed. Forty thousand prisoners in jails all over India were set free. This case gave rise to a revolution in the Indian legal system. She also revealed the Bhagalpur Blindings, resulting in the Supreme Court directing that the policemen who tortured 33 criminals be prosecuted and the victims were released with medical aid and pension for life…..Mrs. Pushpa Kapila Hingorani was a revolutionary in her 35 years –long crusade for justice. She was the lady behind many movements. She was one of the first legal luminaries of India. She was a pioneer in the use of public interest litigation....we have lost not only a leading lawyer, but a true harbinger of justice to the voiceless…when she breathed her

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1 Full Court Reference held on 13 February 2014 at the Supreme Court of India. For detailed discussion on the evolution and development of PIL, see C D Cunnigham *The world 's most powerful Court: Finding the roots of India 's Public Interest Litigation revolution in the Hussainara Khatoon Prisoner 's case* in *Liberty, Equality and Justice: Struggles for a new social order*, S.P. Sathe & Sathya Narayan (EBC Publishing (P) Ltd., Lucknow 2003); A Hingorani, "Indian Public Interest litigation: Locating Justice in State Law" XVII *Delhi Law Review* at 159 (1995); C D Cunningham, "Public Interest Litigation in Indian Supreme Court: A Study in Light of the American Experience" 20 *JILI* 494(1987); Upendra Baxi "*The Supreme Court under Trial: Undertrials and the Supreme Court*" 1 SCC 35 (1980); "Personal Liberty" XV*ASIL* 418 (1979).

last, she left behind a rich legacy of selfless *pro bono* fight for the under-privileged through PILs.

Given that the 100 odd PIL cases filed and argued focused on realizing the fundamental rights for millions of poor, disadvantaged and disabled in India in concrete and practical terms, as opposed to PILs pertaining to diffuse, meta-physical or collective rights, it is indeed gratifying that the year 2013 saw the Supreme Court and the high court's being extremely active in PILs pertaining to the under-privileged and the helpless. The cases covered in this survey exemplify the judicial activism which has become the hallmark of the judicial role in India as redefined by PIL.

II THE RIGHT TO LIFE

In *Mohd. Haroon* v. *Union of India*,[2] the PIL related to the communal violence in Muzzafarnagar and neighbouring areas and highlighted the deteriorating condition of victims of these riots. The Supreme Court directed the State of U.P., in association with the Central Government, to take immediate charge of all persons who are stranded without food and water, and to set up relief camps providing all required assistance. The court directed that all stranded persons be taken to places of safety and be given minimum amenities of food and water. The state was directed to make adequate arrangements for their stay, until rehabilitation and restoration takes place in their respective places. The court further required that necessary medical treatment be provided to all wounded and needy persons.

In *Ajay Bansal* v. *Union of India*,[3] the PIL pertained to the providing relief to people stranded in and around Gangotri due to floods. The Supreme Court, considering the fact that various other areas in Uttarakhand have been as badly affected by the floods, expanded the scope of the PIL so as to cover all affected areas of the State of Uttarakhand. The Supreme Court directed as an interim measure that for all affected persons, including those who have been stranded, immediate relief will continue to be provided by district magistrates of all affected districts by giving them food, medicine, drinking water and other essentials including fuel wherever necessary. The court further directed that, depending upon the availability of the helicopters with the Government of India as well as State of Uttarakhand, sufficient number of helicopters will be deployed for air lifting the stranded persons to safer places. The court held that no discrimination whatsoever will be made by the respondents while providing relief in all respects to the affected/stranded persons. It will be, however, open for the authorities to provide immediate relief to areas which require immediate attention.

In *Harshad J. Pabari* v. *State of Gujarat*,[4] the PIL before the Gujarat High Court sought a direction to authorities to take appropriate action against the responsible officer/staff for disclosing the identity of patients suffering from H.I.V./

2 (2013) 11 SCALE 675.
3 (2013) 7 SCALE 568.
4 (2013) 3 GLR 258.

AIDS by affixing a tape on forehead of patients with the words "H.I.V. seropositive" written on it. The high court held that unfair discrimination against H.I.V./AIDS patients by doctors including the nursing staff of a hospital must be eliminated completely from the practice of medicine. All persons infected or affected by H.I.V./AIDS were entitled to adequate prevention, support, treatment and care with compassion and respect for human dignity. A doctor may not ethically refuse to treat a patient whose condition was within his or her current realm of competence, solely because the patient was seropositive. Doctors must be aware of the discriminatory attitudes towards H.I.V./AIDS that was prevalent in the society and local culture. Because the doctors were the first, and sometimes the only, people who were informed of their patients' H.I.V. status, doctors should be able to counsel them about their basic social and legal rights and responsibilities or should refer them to the counselors who specialize in the rights of persons living with H.I.V./AIDS. Normalizing the presence of H.I.V./AIDS in society through public education was the only way to reduce discriminatory attitudes and practices. In the present case, the high court found that the state did promptly act in matter by constituting a high level committee of five members who, in turn, probed into the incident. The committee came to conclusion that such act of affixing tape on forehead of patients was not with any oblique motive or with intention to humiliate or insult the patient suffering from AIDS. The high court recorded that the state authorities had assured the court that in future such incident would never occur and all steps would be taken to see that H.I.V. positive patients were treated well with dignity and respect. While finding that no further order was required to be passed in the present case, the high court directed that the identity of patients who come for treatment of H.I.V. positive/AIDS should not be disclosed so that other patients would also come forward for taking treatment; that there should be more awareness programmes undertaken by the government especially in rural areas and slum areas so that people could take preventive measures; that the infected H.I.V. positive patients should be educated about AIDS so that he or she may not inadvertently or innocently be responsible in spreading the disease; that there should be proper schemes for rehabilitation of persons who were diagnosed as H.I.V. positive/AIDS patients and that the media should be a little more careful in sensitive matters like the present one because sometimes in the exercise of its duty and over zealousness to see that the erring person was dealt with accordingly, the identity of such a patient in the process may also get disclosed.

III RIGHTS OF WOMEN

In *Laxmi* v.*Union of India*,[5] the PIL highlighted the need for stringent regulations under the Poison Act, 1919 in respect of acid attacks on women. The Supreme Court directed the Home Secretary, Ministry of Home Affairs and the Secretary, Ministry of Chemical and Fertilizers to convene a meeting to discuss the enactment of appropriate provisions for effective regulation of sale of acid in the states/Union Territories; measures for the proper treatment, after care and

5 (2013) 9 SCALE 290.

rehabilitation of the victims of acid attack and needs of acid attack victims, and compensation payable to acid victims by state or the creation of a separate fund for payment of compensation to the acid attack victims. As immediate relief, the court directed that the acid attack victims shall be paid compensation of Rs 3 lakhs by the concerned state government/ Union Territory as the after care and rehabilitation cost. Out of this amount a sum of Rs 1 lakh was to be paid to such victim within fifteen days of occurrence of such incident (or being brought to the notice of the state government / Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs 2 lakhs was to be paid as expeditiously as may be possible and positively within two months thereafter. The chief secretaries of the states and the administrators of the Union Territories were required by the court to ensure compliance of the above direction.

The Supreme Court further held that the states and Union Territories which have not yet framed rules would do well to make rules to regulate sale of acid and other corrosive substances in line with the model rules framed by the Central Government. The states which have framed rules that were, however, not stringent as the model rules framed by the Central Government, would make necessary amendments in their rules to bring them in line with the model rules.

In *Budhadev Karmaskar* v. *State of West Bengal*,[6] the Supreme Court had constituted a panel for the rehabilitation of the sex workers in the PIL pertaining to dignity of sex workers. The Durbar Mahila Samanwaya Samiti had been actively advocating the revocation of the Immoral Traffic (Prevention) Act, 1956, and had also been advocating the recognition of sex trade being continued by sex workers. The *Samiti* was part of the panel. An application was filed in the PIL by the Union of India contending that the continuance of the said *Samiti* in the panel was giving a wrong impression to the public that the Union of India was also inclined to think on similar lines and hence the *Samiti* should be excluded from the panel. The Supreme Court dismissed the application, taking the view that the members of *Samiti* had contributed a great deal towards understanding of problems of sex workers and it was not as though the *Samiti* was encouraging sex trade. Indeed, the *Samiti* was providing valuable inputs into the problems being faced by people engaged in such trade. The presence of the *Samiti* in the committee was necessary, particularly for it to function as a sounding board in respect of problems that were faced by this marginalised and unfortunate section of society. The Supreme Court further clarified that the reference being "conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution" was not be construed as encouraging sex trade.

In *Inaction of Police in Lodging FIR's in Offences Against Women* v. *State of U.P.*,[7] the Allahabad High Court took *suo moto* notice of inordinate delay on part of the police to register the FIR with respect to offences against women. The high court held that it was the duty of the police to know of the statement, especially

6 (2013) 1 SCC 294.
7 (2013) 83 ALLCC 559.

when it is given by the victim in an injured condition and to act on that basis if cognizable offence is disclosed. For meeting such legal obligation, the police officials of the nearest police station must, as part of their duty to investigate a crime, find out the contents of the statement recorded by the magistrate/doctor and if the victim became unable to give further statement or died, then such statement should be the basis for drawing FIR without any undue delay. The high court directed that in all the serious cases where the victim was injured and his/her statement had been recorded by a magistrate/doctor then such statement or further statement of that injured should be recorded as FIR without any delay, in any case within 24 hours of recording of the statement. This alone would ensure that undue delay is not causing in investigation and would also subserve the interest of justice. The high court disposed off the PIL with the further direction that the officials of the nearest police station shall not cause any delay in lodging of the FIR and on that basis they shall inform the police officials of the concerned police station where the crime took place, after recording the FIR in the manner indicated above within 24 hours time limit. The FIR may be sent thereafter to the police station having jurisdiction of the crime. The high court held that if the directions were violated by any particular delinquent police official, then such an action would amount to contempt of court.

IV RIGHTS OF CHILDREN

In *Bachpan Bachao Andolan* v. *Union of India*,[8] the Supreme Court had on 17.01.13 issued an interim direction that in case a complaint with regard to any missing children was made in a police station, the same should be reduced into a first information report (FIR) and appropriate steps should be taken to see that follow up investigation was taken up immediately. Contempt proceedings had thereafter been filed complaining of the manner in which a complaint made regarding a missing child was sought to be handled by the concerned police station. The Supreme Court, while recording that some states had filed affidavits stating that the interim orders had been duly implemented, passed a number of directions. The Supreme Court required each police station to have at least one police officer, especially instructed and trained and designated as Juvenile Welfare Officer in terms of section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The court directed that there should be, in shifts, a Special Juvenile Officer on duty in each police station to ensure that the directions contained in the order are duly implemented. To add a further safeguard, the court directed the National Legal Services Authority to utilize the services of the para-legal volunteers recruited by the legal services authorities so that there is at least one para-legal volunteer, in shifts, in each police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with. The court required the state authorities to arrange for adequate shelter homes or after-care homes for children, who had gone missing and, upon being found, did not have any place to go.

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8 (2013) 7 SCALE 507.

The court held that such shelter homes or after-care homes will be set up by the state government concerned, that that the funds to run the same will also be provided by the state government together with proper infrastructure. The court required that such homes be put in place within three months at the least. Further, a private home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the child welfare committee and unless it complies with all the provisions of the Juvenile Justice Act, 2000 including registration. The court, while dropping the contempt proceedings, required the states to file their status reports with regard to the implementation of its directions.

In *Voluntary Health Association of Punjab* v. *Union of India*,[9] the PIL complained about the non-implementation of section 17 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 by the states and Union Territories and the failure to achieve its objectives. The Supreme Court observed that it was not in position to know whether all states and Union Territories have constituted the appropriate authority under the Act and whether they are functioning effectively. The court held that for the time being, it was inclined to examine the situation which exists in the states of Punjab, Haryana, N.C.T. Delhi, Rajasthan, Uttar Pradesh, Bihar, and Maharashtra, where the statistics made available would show a drastic reduction in female child sex ratio. The court directed the health secretaries of all the above mentioned states to remain present in court to apprise the court of the steps taken to implement the provisions of the Act and to make available the latest statistics of the number of cases booked for violation of the provisions of the Act, the prosecutions launched and the conviction rate.

V RIGHT TO WATER

In *Research Foundation for Science* v. *Union of India*,[10] the PIL related to the supply of potable drinking water to the eighteen identified areas surrounding the Union Carbide Factory in Bhopal. The Supreme Court had held that there should be a monitoring committee to oversee the part of the work being undertaken by the Bhopal Municipality for providing fresh drinking water to the eighteen affected areas near the plant. The court took on record the report of the said committee containing recommendations and suggestions.

In *Research Foundation for Science* v. *Union of India*,[11] the Supreme Court noted that it had issued certain directions with regard to the availability of potable drinking water to the inhabitants of the area surrounding the Union Carbide factory at Bhopal. The Indian institute of Toxicology Research (IITR), Lucknow, U.P. was to file its report. However, such report with regard to ground water contamination in the factory premises itself could not be filed because its representatives were denied access to the factory by the state pollution control

9 (2013) 1 SCALE 383.
10 (2013) 7 SCALE 497.
11 (2013) 7 SCALE 499.

board, despite various requests having been made by the institute in that regard. The Supreme Court directed the state pollution control board to give access to the representatives of the aforesaid Institute to enter the factory premises with the purpose of drilling and taking samples from within the factory premises, and imposed the obligation upon the state pollution control board and the state government to take immediate steps to ensure implementation of the direction.

VI PIL AND THE ENVIRONMENT

In *G. Sundarrajan* v. *Union of India*,[12] the PIL opposed the setting up of the nuclear power plant at Kudankulam in State of Tamil Nadu, on the ground of adverse impact of nuclear installations on life and property, environment, flora and fauna, marine life, nuclear waste disposal, health, displacement of people *etc*. which had a direct link with article 21 of the Constitution and the environmental laws of the country. On appeal, the Supreme Court stated that it was deeply concerned with the safety and security of the people of the country, its environment, its flora and fauna, its marine life, ecology, bio-diversity and so on which the policy makers cannot be on the guise of national policy, mutilate or rob of. In such an event the courts can unveil the mask and find out the truth for the safety, security and welfare of the people and the mother earth. In the present case, the court justified the setting up of the plant, holding that the trend of authorities was that a delicate balance has to be struck between the ecological impact and development. The court emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. Economic benefit had to be viewed on a larger canvas which not only augmented economic growth but alleviated poverty and generated more employment. The court found that the authorities had satisfied the environmental principle like sustainable development, corporate social responsibility, precautionary principle, inter - intra generational equity and so on to implement the National Policy to develop, control and use of atomic energy for the welfare of the people and for economic growth of the country. The court held that larger public interest of the community should give way to individual apprehension of violation of human rights and right to life guaranteed under article 21 of the Constitution.

VII PIL AND ARBITRARY STATE ACTION

In *Noida Enterpreneurs' Association* v. *New Okhla Development Authority*,[13] the PIL filed in the Supreme Court sought a thorough probe into the allotment of land and plots and the abuse of power by the functionaries of NOIDA. The arbitrary allotment of land and plots in NOIDA had become subject matter of innumerable controversies and generated huge litigation in the Allahabad and Delhi High Courts. The PIL contended that the very object of creating NOIDA by the state government has been defeated because of major land scandals. The court entertained the PIL

12 (2013) 7 SCALE 102.
13 (2013) 14 SCALE 475.

and required all the persons named in the petition in relation to improper allocation of land to show cause as to why allotments/alternative allotments made in their favour may not be quashed.

In *Nagarmal Sharma* v. *State of Rajasthan*,[14] the PIL before the Rajasthan High Court questioned the government order whereby permission granted for merging various schools. Rule 7 of Rajasthan Right of Children to Free and Compulsory Education Rules, 2011 framed under Right of Children to Free and Compulsory Education Act, 2009 required the establishment of school to ensure availability of a school in a given distance. The high court held that the said rule necessarily enjoined upon the state not to close down school so as to increase distance for students beyond 2 kilometers. In present case, the school was being shifted 2.5 kilometers away from its present location due to merger, which was apparently contrary to spirit of the rules and the Act. The high court, accordingly allowed the PIL, while quashing the government order.

In *Ganga Pollution* v. *State of U.P.*,[15] the PIL before the Allahabad High Court pertained to the adverse effects of the flooding of river Ganga and the damage caused to two newly constructed STP's. It was stated that more than 75 villages were inundated and submerged due to flood in district Allahabad and more than 2/3rd area of the city side was also badly affected by the flood. Several colonies on the river bank were flooded, and the ground floor of several houses was submerged in water, endangering the life in those localities. Inspite of the judicial orders restraining construction activities within 500 meters from the highest flood level, the Allahabad Development Authority failed to check such illegal construction. Due to lapses on the part of the officials of the U.P. Jal Nigam, Ganga Pollution Control Unit of U.P. Jal Nigam and irrigation department, both the newly constructed STP's suffered extensive damage by the flood water. The construction of both the STP's was undertaken under the project sanctioned by the Government of India. Huge public money running into hundreds of crores had been allocated by the Government of India for construction of both the STP's. In respect of the Rajapur STP, even certain machines and equipments had flown into the river water and the entire STP was submerged in the flood water causing damage to the machines. The high court found that the technical experts, who had been entrusted to oversee the construction of STP design and supervise the construction of STP, were grossly negligent. Holding that huge public funds cannot be allowed to be wasted and mis-utilised in this manner, the high court directed that state government to fix the responsibility and accountability of such negligence and to take stern action, which was to be reported to the court. The Principal Secretary, Urban Development Department was required to take immediate measures to make the both STP's functional and to take all remedial measures including the protection of both the STP's so that it cannot be damaged by any further floods. The high court further directed that the Allahabad Development Authority with collaboration of the district administration to freeze all construction and draw a red line covering

14 (2013) 4 CDR 1923(Raj).
15 (2013) 8 ADJ 230.

the entire open area on both sides of river Ganga from Old Yamuna Pul to Draupadi Ghat at first stretch and prepare a map accordingly. Red line was required to be marked with permanent marks so that no further construction activity may be possible after red line, and in the event any construction was reported, serious action be taken against the officials and employees of the Allahabad Development Authority. In drawing the red line, the Allahabad Development Authority was directed to take within its fold the entire vacant area within 500 meters from highest flood level which map has already been prepared.

The high court also examine the slackness on part of the state to obtain dredging machines, which were necessary for dredging, especially in lean season for maintaining the minimum flow of water in river Ganges at Allahabad, and issued necessary directions in this regard. The court emphasized on the maintenance of *Green Belt* in Allahabad and both sides of river Ganga. After referring to article 48A, 51A and 21 of the Constitution, the high court emphasized that protection of environment in cities which was surrounded by rivers Ganga and Yamuna on three sides had become most important on account of increasing pollution, urbanization and increase of vehicular traffic day by day. The high court approved the Green Belt Development Plan submitted by the Nagar Nigam, Allahabad, and directed it to implement same.

In *Bhartiya Janta Party* v. *State of West Bengal*,[16] the PIL before the Calcutta High Court challenged the validity of the decision of the Government of West Bengal to grant honorarium to the Imams and Muazzins of different mosques in the State of West Bengal. The high court held that it is well settled that the state could not patronise or favour any particular religion. Secularism is part of the basic structure of the Constitution. The state, therefore, could not identify itself with or favour any particular religion. The state was under an obligation to offer equal treatment to members of all the religions. The high court, thus, held that the state government by the decisions to provide honorarium to Imams and Muazzins, who were members of a particular religious community, had failed to make equal treatment to all the religious communities. The high court referred to case law for the proposition that where an act was arbitrary, it was implicit in it that it was unequal both according to political logic and constitutional law and was therefore violative of article 14 of the Constitution. Article 14 struck at arbitrariness in state action and ensured fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, was an essential element of equality or non-arbitrariness pervaded article 14 like a brooding omnipresence and the procedure contemplated by article 21 must answer the test of reasonableness in order to be in conformity with article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive. Thus the concept of 'Public Purpose' becomes justifiable in a court of law. Article 282 of the Constitution made it clear that the spending power of Union of India or the state government, as the case may be, was not co-terminus with legislative power. Nonetheless, the money has to be

16 AIR 2013 Cal. 215

spent for a public purpose. The concept of public purpose cannot be contrary to the pronounced constitutional value of secularism. If today the government was allowed to spend out of public exchequer by granting honorarium to the religious leaders of a particular religious community to the exclusion of similar treatment to religious leaders of other religious communities, such governmental action being unconstitutional, cannot be said to be for public purpose. The high court, thus, found that the state government, by providing funds for making payment of honorarium to the Inams and Muazzins, had acted in clear violation of the provisions enshrined under article 14 and 15(1) of the Constitution. The high court, accordingly, allowed the PIL and quashed the decision of the state government.

In *Somdev Kapoor* v. *State of West Bengal*,[17] the PIL before the Calcutta High Court sought the cancellation of the temporary liquor license issued to the appellant on the ground that it was not open for the appellant to run a liquor bar in the said restaurant which was in the vicinity of religious places, namely, Gurudwara Bara Sikh Sangar, Shree Jain Swetambere Panchayati Temple, Shree Laxmi Narayan Mandir, Shree Shree Satya Narayanji Mandir and a mosque, as also a school, Shree Digambar Jain Vidyalaya. The PIL stated that the aforesaid religious places and school were situated within the distance of 550 feet of the premises where the license to operate the bar by the Excise Department was granted to the appellant in violation of Rule 8 of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003, as amended in the year 2004. The amended rule 8 imposed a ban on the grant of license for the retail sale of liquor or any other intoxicant at a new site which is within 1000 feet from any college/educational institution /religious places. The high court allowed the PIL, while directing the excise department not to renew the license of the appellant. On appeal, the Supreme Court confirmed the view taken by the high court, while rejecting the attempt to impute *mala fide* to the petitioners in the PIL.

In *In Re: Regularization of Class IV Employees*,[18] the *suo moto* PIL by the Allahabad High Court, on its judicial side, examined the legality of the regularization of 355 daily labours working in Allahabad High Court. According to Rule 4(a) of Daily Labours - Regularization of Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 and Rules 14 of Allahabad High Court Staff Car Drivers (Conditions of Service and Conduct) Rules, 2000, the preference was first to be given to daily labourers already engaged by high court, and if after making recruitment from this source some vacancies were left unfilled for want of suitable persons, the remaining vacant posts were to be filled by inviting applications through employment exchange. The high court held that such rules assured employment to only daily labourers engaged by excluding competition, selection and denying equality opportunity of employment, and hence violated equality clause of Constitution. While the power to frame rules of employment in respect of class IV employees and drivers flow from article 229

17 (2013) 12 SCALE 434.
18 (2013) 8 ADJ 43.

of Constitution, but such powers were subject to the limitations of article 14 and article 16 of Constitution. The rules, which virtually reserved the posts for recruitment from amongst daily labourers already engaged by high court, were hit by the equality clause. Further, Rule 25 of 1976 Rules and Rule 8 of 2000 Rules clearly mandated that an advertisement was to be made for public at large to know about vacancies so that eligible candidates may apply. The high court held that the process of regular appointment through advertisement or through known methods of public employment had not been followed. The high court disposed off the PIL issuing certain directions in term of recruitment, while directing that the regular engagements already made against 355 posts would not be disturbed but same would not be treated as precedent.

In *Padmanabhaiah* v. *Government of Andhra Pradesh,*[19] the PIL before the Andhra Pradesh High Court sought a declaration to the effect that the selection and appointment of the respondent nos. 3 to 6 as state information commissioners to respondent no. 2 commission was arbitrary, illegal, unreasonable, without application of mind, contrary to provisions of section 15(3) (5) and (6) of Right to Information Act, 2005 and violative of articles 14 and 16 of Constitution. The high court allowed the PIL holding on facts that that the appointments were invalid *inter alia* on the ground that the persons held office of profit. The high court observed that if any disqualified person as mentioned in section 15 (6) of Act was chosen and appointed he or she must relinquish his/her position, immediately after appointment if he or she holds office of profit. Such requirement was *sine qua non* before assumption of charge, since independent functioning had to be ensured. Hence, the high court set aside the selection as well as appointment, and directed the Government to undertake selection process afresh.

V. Thisai Indiran v. *State of Tamil Nadu,*[20] the PIL before the Madras High Court sought the extension of free bus pass scheme to students of government law colleges in Tamil Nadu. The transport corporation had issued free bus pass to the students studying from standards I to XII in government schools, government aided schools and approved schools and also the students studying in government arts colleges and engineering colleges, government polytechnics and government industrial training institutes. The high court held that article 21 of the Constitution with article 39(A) cast a duty on the state to afford grant-in-aid to recognized private law colleges, similar to other faculties, such as, arts and science, engineering and medicine. The high court found that there was discrimination in extending free bus pass to the students based on their admission in different courses. The denial of free bus pass to law college students was arbitrary, discrimination and violation of article 14 of the Constitution. Accordingly, the high court allowed the PIL.

In *Ashok Goswami* v. *State of M.P.,*[21] the grievance in the PIL before the Madhya Pradesh High Court was that the provisions of Building and other

19 (2013) 5 ALT 732, 2013.
20 (2013) 6 MLJ 513.
21 (2013) 5 LLN 640 (MP).

Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 had not been complied with. The high court disposed off the PIL, requiring the state to comply with the directions issued by the Supreme Court in an earlier decision to the effect that state governments and Union Territories which have not framed the necessary rules could take the Delhi Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 2002, as a model and adopt the same; that welfare boards be constituted by each state with adequate full time staff within three months; and that the welfare boards meet at least once in two months or as specified in the rules, to discharge their statutory functions. Further directions included that awareness be built up about the registration of building workers and about the benefits available under the Act; that there be effective use of media, AIR and Doordarshan, for awareness programmes regarding the Act, the benefits available thereunder and procedures for availing the benefits; that each state government shall appoint registering officers and set up centers in each district to receive and register the applications and issue receipts for the applications; that registered trade unions, legal services authorities and NGOs be encouraged to assist the workers to submit applications for registration and for seeking benefits; that all contracts with the governments should require registration of workers under the Act and extension of benefits to such workers under the Act; and that steps to be taken to collect the cess under the Cess Act, 1996 continuously. The member-secretary of the welfare boards and the labour secretary were to be responsible for due implementation of the provisions of the Act. The Labour Ministry of each state was to carry out special drives to implement the provisions of the Act. The comptroller and auditor general (CAG) should audit the entire implementation of the Act and use of the funds. All the boards were to submit a comprehensive report as required under the Act and the rules to the respective government.

In *Subhas Dutta* v. *Union of India*,[22] the PIL highlighted the need to preserve the inventory items in the Indian Museum, Kolkata and Victoria Memorial, Kolkata. Noting that the Buddha Bust was missing from the Indian Museum, Kolkata and that the said Museum had submitted that due to acute shortage of manpower as well as absence of scholars and experts, the Indian Museum, Kolkata is finding it extremely difficult to complete the verification which was started as early as in the year 2005, the Supreme Court directed the Ministry of Culture, Government of India to look into this matter and to provide resources, persons, scholars and experts and also provide necessary funds so that substantial progress can be made in the matter of verification of above-mentioned items.

In *Cricket Association of Bihar* v. *Board of Control for Cricket in India*,[23] the PIL before the Bombay High Court related to the infamous cricket match fixing controversy. The PIL challenged the constitution of the probe committee comprising two retired judges of Madras High Court. The high court had held the constitution of the probe committee as being *ultra vires* the IPL Rules. On appeal, the Supreme

22 (2013) 1 SCALE 380.
23 (2013) 12 SCALE 671.

Court held that, without casting any aspersion on the two retired judges of the Madras High Court and considering the fact that the Mumbai Police has submitted the charge sheet against Gurunath Meiyappan, a probe committee comprising members who can function independently of the BCCI and its President should be constituted for probing the allegations referred to in the PIL. The Supreme Court accordingly appointed the fresh probe committee to examine allegations of betting and spot fixing in the IPL matches against Gurunath Meiyappan, the team principal of Chennai Super Kings, the players and the team owner of IPL Franchisee Rajasthan Royals. The Supreme Court required the BCCI and its President not to, in any way, interfere with the probe conducted by the probe committee.

In *Mahendra Singh Aswal* v. *State of Uttarakhand*,[24] the PIL before the Uttarakhand High Court had contended there were as many as 15 criminal cases alleging commission of various offences against respondent no. 8 and in connection therewith non-bailable warrants of arrest had been issued but they were not being executed, despite the Supreme Court directing respondent no. 8 to surrender before the courts before whom those cases are pending. It was contended that there was no law and order in the state as hardcore criminals were being protected by the administration. In course of hearing the PIL, it transpired that in one of those cases, an application under section 321 of the Cr PC had been allowed without considering public interest in the withdrawal of the said case. The high court had disposed off the PIL directing *inter alia* fresh decision to be rendered on the application under section 321 of the Code, and requiring the respondent no. 8 to surrender before the court and to apply for bail, which was to be decided by immediately by the competent court. Thereafter, an application was filed under section 340 of the Cr PC contending that as on the date when the PIL was decided, a non-bailable warrant, a proclamation and an attachment were outstanding against respondent no. 8. The high court held that the respondent no. 8 had clearly hoodwinked the court and had scant regard for the orders of the court as well as those pertaining to administration of justice and the manner, in which matters have been dealt with by him in the court suggests he is above law. The high court took the view that the total apathy on the part of the administration was encouraging people like respondent no. 8 to act in the manner he had acted. The high court exercised its jurisdiction under the principles applicable to contempt of court, by directing respondent no. 8 to be present before the registrar general of the court on a certain date and time, and to remain seated in a chair to be provided by the registrar general of the court for one hour as a punishment for supplying untrue information to the court.

VIII FREEDOM OF SPEECH AND EXPRESSION

In *Awdhesh Singh Bhadoria* v. *Union of India*,[25] the PIL raised the issue of advertisement of products without clinical trial. The Madhya Pradesh High Court held that there is no absolute freedom of expression in respect of any commercial

24 (2013) 83 ALLCC 932.
25 AIR 2013 (NOC) 253 M.P.

product. The advertiser has to claim the potential of the product on basis of the accepted result in clinical trials. While every citizen has freedom of speech and freedom of expression, such right cannot be exploited to sell products commercially by making false claims or by making religious appeal as that would hamper society adversely. The high court directed the petitioner to file an appropriate complaint before Advertising Standards Council of India in prescribed form, while requiring the state government to take effective steps in regard to recommendations submitted to the ministry by Secretary, Press Council of India.

IX PIL AND POLICY DECISIONS

In *Arun Kumar Agrawal* v. *Union of India*,[26] the PIL before the Supreme Court challenged the approval granted by the Government of India for the acquisition of majority stake in Carin India Limited (CIL) for US $ 8.48 billion and also for a direction to the Oil and Natural Gas Corporation of India (ONGC) to exercise its right of pre-emption over sale of shares of CIL on the same terms without causing any loss or profit to the Cairn Energy. The PIL sought a further direction to CBI to investigate the reasons for ONGC, a Government of India Undertaking, in not exercising their legal rights under the Right of First Refusal (RoFR) and giving clearance to the CAIRN- Vedanta Deal on the basis of the existing right to share the royalty and cess on *pro-rata* basis and also for the consequential reliefs. The Supreme Court took the view that the court, sitting in PIL jurisdiction, was not justified in interfering with a complex economic decision taken by a state or its instrumentalities in the absence of violation of any statutory provision or proof of *mala fide* or on extraneous and irrelevant considerations. The court noted that that the ONGC and the Government of India had considered various commercial and technical aspects flowing from the PSC and also its advantages that ONGC would derive if the Cairn and Vedanta deal was approved. The court reasoned that it could not sit, in the PIL, in judgement over the commercial or business decision taken by parties to the agreement, after evaluating and assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives. The states and their instrumentalities could enter into various contracts which may involve complex economical factors. The state or the state undertaking, being a party to a contract, has to make various decisions which it deemed just and proper. There was always an element of risk in such decisions. Ultimately it may turn out to be a correct decision or a wrong one. But if the decision was taken *bona fide* and in public interest, the mere fact that decision has ultimately proved to be a wrong one is not a ground to hold that the decision was *mala fide* or take with ulterior motives. Matters relating to economic issues, have always an element of trial and error, so long as trial and error are bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal.

The Supreme Court, accordingly, dismissed the PIL stating that such PIL was filed without appreciating or understanding the scope of the decision or the

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26 (2013) 7 SCALE 333.

making process concerning economic and commercial matters which gave liberty to the states and their instrumentalities to take appropriate decisions after weighing advantages and disadvantages of the same, and that the Supreme Court sitting in PIL jurisdiction, as already indicated, was not justified in interfering with those decisions, especially when there is nothing to show that those decisions are contrary to law or actuated to *mala fide* or irrelevant considerations.

In *Ehsan Khalid* v. *Union of India*,[27] the PIL before the Supreme Court related to the disinvestment of 10% equity of Coal India Limited (CIL) in October 2010. The PIL alleged that powerful financial institutes usurped the natural resources only on payment of Rs. 15,200 crores and caused loss to exchequer of Rs. 1.75 lakh crores to the nation. According to the petitioner, the proposal of equity disinvestment was neither legal nor transparent. The existing norms and government laid down policies were flouted. The petitioner asserted that that the assets valuation methodology was not adopted which is the most appropriate methodology of valuation. The Supreme Court held that where challenge is laid to a government policy, particularly economic policy, the court does not interfere in such policy matter in its power of judicial review unless the impugned policy was found to be grossly arbitrary or unfair or unreasonable or irrational or violative of constitutional provisions or contrary to statutory provisions. In the present case, if the price band of Rs. 226-245 per share was fixed after following the, Issue of Capital and Disclosure Requirements, Regulations, 2009 (ICDR) and on taking into consideration the relevant methodologies of valuation for sale of equity capital, it cannot be said that the price band so fixed was unreasonable or sale of 10% equity capital by CIL was unfair. The court accordingly dismissed the PIL *in limine*.

In *Manohar Lal Sharm* v. *Union of India*,[28] the PIL before the Supreme Court challenged the policy allowing Foreign Direct Investment (FDI) in Multi-Brand Retail Trading. The petitioner sought the quashing of certain press notes being unconstitutional and without any authority of law. By these press notes, the policy of FDI in single-brand product retail trading, multi-brand retail trading, air transport services, broadcasting carriage services and power exchanges has been reviewed. In the forwarding circular, it was mentioned that necessary amendments to Foreign Exchange Management (Transfer or Issue of security by a Person Resident Outside India) Regulations, 2000 (for short "Regulations", 2000) were being notified separately. By the 2012 Regulations, Reserve Bank of India in exercise of the powers conferred by clause (b) of the sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (for short "FEMA"), made amendments to the 2000 Regulations. It was stated that the amended FDI policy will generate employment, improve infrastructure and provide better quality products. The farmers will benefit significantly from the option of direct sales to organised retailers.

The Supreme Court, while noting that there was no challenge to the 2012 regulations, found that impugned policy is only an enabling policy and the state

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27 (2013) 10 SCALE 452.
28 (2013) 3 SCALE 339.

governments/ Union Territories were free to take their own decisions regard to implementation of the policy in keeping with local conditions. The court dismissed the contention that Central Government has no authority or competence to formulate FDI Policy. The court added further that on matters affecting policy, the court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned policy that allows FDI in Multi-Brand Retail Trading does not appear to suffer from any of these vices.

In *Centre for P.I.L* v. *Union of India*,[29] it may be recalled that the Supreme Court had entertained the PIL relating to the allocation of 2G Spectrum by the Government in terms of the Telecom Regulatory Authority of India Act, 1997. The court had held that the allocation of the 2G Spectrum and the grant of Unified Access Service Licenses (UAS License) with 2G spectrum on the principle of "first-come-first served" and on the basis of 2001 prices by invoking the theory of 'level playing field' is arbitrary and unconstitutional. Thereafter various applications came to be filed, which the Supreme Court disposed off while directing that the entire spectrum released as a result of quashing of the licenses should be auctioned without further delay. The court clarified that its earlier judgement did not consider the issue relating to allotment of spectrum in 900 MHz. band, and therefore that judgement will have no bearing on the litigation, if any, filed in the matter of allotment/re-allotment of spectrum in 900 MHz. band and the competent judicial/quasi-judicial forum shall be free to adjudicate upon the pending matters or which may be filed hereinafter in relation to the allotment of spectrum in 900 MHz. band and connected issues. The court directed that such of the licensees, who continued operation after the judgement, shall pay the reserve price fixed by the government for the purpose of conducting auction in November, 2012. Those licensees, who did not give bid in the auction conducted in November, 2012 or who remained unsuccessful shall forthwith discontinue their operations in the concerned circles/areas and the successful applicants should be allowed to operate in those circles/areas. The issue relating to liability of the licensees, who discontinued their operations between November, 2012 and the date of these direction was to be decided separately.

In *G. Sundarrajan* case,[30] the PIL questioned the setting up of the nuclear power plant at Kudankulam in State of Tamil Nadu, in respect of which there had been large-scale agitation and emotional reactions. The contention was that such setting up of nuclear power plant was contradictory to public policy. On appeal, the Supreme Court held that such a plant was set up as part of India's National Policy so as to develop, control and use of atomic energy for welfare of people of India. The court noted that a lot of scientific literatures, experts opinions etc. had been cited to show its dangers, harm it may cause to human health, environment, marine life and so on not only on the present generation but on future generation as well. Further, it was also pointed out that due to growing nuclear accidents and

29 2013) 2 SCALE 357

30 See *supra* note 12.

the resultant ecological and other dangers, many countries have started retreating from their forward nuclear programmes. The court took the view that issues were to be addressed to policy makers, not to courts because the destiny of a nation is shaped by the people's representatives and not by a handful of judges, unless there is an attempt to tamper with the fundamental constitutional principles or basic structure of the Constitution. Public opinion, national policy, economic growth, sustainable development, energy security were all intrinsically interlinked. One could not be divorced from other, all the same, a balance had to be struck. Nuclear energy was considered to be a viable source of energy and it is necessary to increase country's economic growth. India cannot afford to be a nuclear isolated nation, when most of the developed countries consider it as a major source of energy for their economic growth. For setting up the present project, the project proponents had taken all safety requirements in site and off site and had followed the code of practices based on nationally and internationally recognized safety methods. Further, necessary clearances had also been received. All expert teams were unanimous in their opinion of safety and security of the plant to life and property of people and environment which included marine life. Moreover, where project was beneficial for larger public, inconvenience to smaller number of people had to be accepted. Individual interest or, smaller public interest must yield to larger public interest and inconvenience of some shall be bypassed for larger interest or cause of society. Accordingly, the Supreme Court dismissed the matter.

In *Mool Chand Kumawat* v. *National Highway Authority of India*,[31] the PIL before the Rajasthan High Court sought for a direction to the authorities to construct one underpass at Neem Nagar Railway Over Bridge situated at National Highway no.11 and one underpass and one divider/cut at Trilokpura, District situated at National Highway no.11. The authorities contested the PIL as to the need of such underpass, and stated that the projects were underway after a study of traffic data collected from detailed survey. The high court declined to entertain the PIL, holding that the court was ill-equipped to delve into and decisively analyze the highly technical aspects involved, addressed by experts in-charge of execution thereof.

In *Nandu* v. *State of Maharashtra*,[32] the PIL before the Bombay High Court sought a direction to quash and set aside the tender notice published in a daily in respect of the Project namely "Four laning of Warora-Chandrapur-Ballarpur-Bamani road and bridges on SH 264, Part Warora to Chandrapur km 40/100 to 83/409, Part Chandrapur to Bamani km 94/00 to 107/800 including Chandrapur bypass road (SH 266) km 0/00 to 5/200 and 2 km length of SH 267 in Chandrapur district, total length 64.40 kms, as also the whole process undertaken by the authorities in pursuance of the aforesaid tender notice. The PIL sought the constitution of a high power committee consisting of experts in the field, so as to properly estimate the cost of the said project and a direction the aforesaid high power committee to monitor and supervise the work of the aforesaid project in the interest of the public at large. The PIL had challenged the tender on grounds *inter alia* that it was not

31 (2013) 4 CDR 2129 (Raj).
32 (2013) 6 ABR 64.

permissible for the state to permit a contractor to collect the amount in excess of actual expenditure on the project and that undue benefit was being given to the contractor. The high court, while dismissing the PIL on merits, held that the modern trends point to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision was to be permitted, the court would be substituting its own decision, without the necessary expertise which itself may be fallible. The terms of the invitation to tender could not be open to judicial scrutiny because the invitation to tender was in the realm of contract. Normally speaking, the decision to accept the tender or award the contract was reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. The government must have freedom of contract. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Interference of the court would be warranted only if the decision making process of the state suffers from irrationality, arbitrariness or irregularity.

In *Parisar Sanrakshan Sanwardhan Sanstha, Yamuna* v. *Pune Municipal Corporation*,[33] the PIL before the Bombay High Court challenged the legality of work of a grade separator carried out by Municipal Corporation within prohibited area from protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The high court found that the authorities were setting up an underpass at intersection of road to obviate traffic congestion. There was sufficient evidence to show that the underpass would serve as facility for public convenience and was not illegal construction under the Act. There was no evidence to show that work of the authorities was motivated by any commercial gain. Moreover, sufficient mitigative steps were undertaken by the authorities for protection of the monument. The high court held that no interference in the exercise of the jurisdiction under article 226 of the Constitution was warranted.

In *Ashok Pande* v. *Union of India*,[34] the PIL before the Allahabad High Court sought a *mandamus* directing the Cabinet Secretary and Secretary, Ministry of Information and Broadcasting of the Government of India to prohibit all the departments and public sector undertakings from publishing photographs in various advertisements which are published by different departments from time to time in the newspapers, television or anywhere else of political leaders who were not holding any government office and that such prohibition should also cover photographs of Ms. Sonia Gandhi because she was holding no post in the Union of India but was actually the Chairperson of United Progressive Alliance. The PIL further sought a direction to the authorities to recover part of the cost of advertisements issued with the photographs of Ms. Sonia Gandhi during last nine years, from her party, the Indian National Congress. In response, the Union of India contended that the achievements and programmes of the government were

33 (2013) 6 ABR 558.
34 (2013) 100 ALR 598.

publicized through the advertisements and it was an acceptable and established practice to include the photographs of the leaders under whose benign guidance and leadership such achievements had been made. Further, executive authority of the Union of India was as wide as its legislative authority and it was not necessary that each executive decision must be in terms of some statutory provision or law.

The high court held that it was within the powers of the Union of India to take appropriate executive decisions and the only limitation on such powers was that the decisions must not run counter to any constitutional or statutory provisions which prohibit the authorities from deciding the contents of publicity material or to include as an acceptable and established practice the photographs of some leaders whose guidance and leadership were considered fit to be acknowledged. The high court took the view that in a PIL, the petitioner was ultimately required to show that the prayer which he was seeking shall promote public interest. The high court held that it was very difficult for the court, considering the set of facts and controversial issues, to come to any final conclusion that the petitioner's prayer, if granted, shall promote public interest. The high court reasoned that the functioning of a democracy in a healthy and vibrant manner required the establishment of healthy practices and conventions. All such matters could not be governed by statutory law. It was the responsibility of those in power to establish healthy practices and conventions which could alone be the root of democracy in India, which achieved independence recently. The high court opined that it would not be proper for it to interfere in such matters of policy. So far as the issue of wastage of public funds is concerned, it was not the case of the petitioner that government could not issue advertisements in newspapers or television. Admittedly, different governments at different levels had been doing so since long time. It was difficult to ascertain the additional financial burden where a visual image was published or telecast in a format which included more than one or two photographs. The high court held further that it would be hazardous to lay down, in concrete terms, the ideal relationship between the party in power and the government which it had provided. That relationship is itself was a tender and delicate relationship which should not be disturbed by extraneous forces. Only exceptional situation could invite intervention of the court when the constitutional provisions were under threat or had been breached. The high court, accordingly, did not find any good reasons to intervene in the matter, and dismissed the PIL.

In *Pathan Mohammed Suleman Rehmatkhan* v. *State of Gujarat,*[35] the PIL before the Gujarat High Court seeking a declaration that the action of the state government of allotting land in favour of the respondent company was illegal and void in light of the report of CAG, and seeking an investigation by the Central Bureau of Investigation (CBI). On appeal, the Supreme Court considered the question as to whether the decision of the state government to develop an international finance service city on the basis of a public private partnership model with a social objective could be termed as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the equality clause embodied in article 14

35 (2013) 14 SCALE 385.

of the Constitution of India. The court examined the salient features of the project and held that it cannot be said that the state has acted against public interest. Holding that the decision taken by the government was transparent, the Supreme Court dismissed the matter. The court reasoned that the government had also got substantial stake in the public-private partnership and had taken care of its interests while entering into the various agreements. The court held that non-floating of tenders or absence of public auction or invitation alone was not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounting to *mala fide* or improper exercise of power. It is open to the state and the authorities to take an economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest.

In *Radhakrishnan Nair S* v. *State of Karnataka,*[36] the PIL before the Karnataka High Court raised the issue of health hazard likely to be posed by construction of a crematorium in the vicinity of a residential area. The high court found that the location of proposed crematorium in area nearby residences of petitioners was *per se* not found to be illegal or in violation of any rules. The high court disposed off the PIL, while granting liberty to the petitioners to make appropriate representation about measures which may require to be taken to maintain the quality of air under Air (Prevention and Control of Pollution) Act, 1981.

X PIL AND APPOINTMENT TO CONSTITUTIONAL POSTS

In *M. Manohar Reddy* v. *Union of India,*[37] the PIL filed before the Supreme Court under article 32 of the Constitution sought a writ in the nature of *quo warranto,* quashing the appointment of the respondent no. 3 as a judge of the Andhra Pradesh High Court and a writ in the nature of *mandamus* commanding the Bar Council of Andhra Pradesh to cancel his enrollment as an advocate. The grounds were that *firstly*, a criminal trial was pending in which the said respondent was not only an accused but a proclaimed offender at the time of his appointment as a judge, and *secondly*, even at the time of his enrollment as an advocate he had concealed the criminal proceedings and had, in the relevant column of the application for enrollment with the bar council, falsely stated that there was no pending proceeding against him. The PIL contended that the consultation process leading to the appointment of the said respondent as a judge was vitiated as both the High Court and the Supreme Court Collegian as well as the Central Government failed to consider two essential facts.

The Supreme Court, however, took the view that the said respondent himself was not aware of the pendency of the criminal proceedings against him. None of the members of the high court or the Supreme Court Collegia were aware of such fact. Neither was the Central Government or the state government aware of such fact. The Supreme Court formulated the question to be as to whether a fact that is

36 (2013) 6 KarLJ 573.
37 (2013) 3 SCC 99.

unknown to anyone can be said to be not taken into consideration and whether the consultative process faulted as incomplete for that reason. The Supreme Court dismissed the PIL holding that to fault the consultative process for not taking into account a fact that was not known at that time would introduce a dangerous element of uncertainty in the appointments. The court reasoned that in case it comes to light that some material facts were withheld by the person under consideration or suppressed at his behest, then that may be a case of fraud that would vitiate the consultative process and consequently the appointment resulting from it. However, in case the fact was unknown and there was no suppression of that fact, a writ of *quo warranto* would certainly not lie. According to the court, if the members of the two houses of the Parliament consider the discovered fact sufficiently serious to constitute misbehaviour and to warrant removal of the judge, then he may still be removed from office by taking recourse to the provisions of article 124(4) or article 217 read with article 124(4) of the Constitution as the case may be.

In *State of Punjab* v. *Salil Sabhlok*,[38] the Supreme Court held that the PIL challenging an appointment to a constitutional position like the chairperson of a public service commission to be maintainable. The PIL filed before the Punjab & Haryana High Court under article 226 of the Constitution sought a *mandamus* directing the state government to frame regulations governing the conditions of service and appointment of the chairman and/or the members of public service commission as envisaged in the article 318 of the Constitution, as well as a direction restraining the state government from appointing its appointee as the chairman of the Punjab Public Service Commission. The Supreme Court held that it was important to appreciate that the chairperson of a public service commission holds a constitutional position and not a statutory position. The PIL espoused the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the chairman of the public service commission was a man of ability and integrity so that the recruitment to public services in the State of Punjab was from the best available talents and was fair and not influenced by the politics and extraneous considerations. In the case like this where the appointment was constitutional, the writ of *quo warranto* would be an available remedy as it was not a 'service matter'. Even where a writ of *quo warranto* may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy in the public interest. The Supreme Court had, therefore, fashioned a 'writ of declaration' to deal with such cases.

XI PIL AND CONSTITUTIONAL CHALLENGES

In *B.K. Manish* v. *State of Chattisgarh*,[39] the Chattisgarh High Court held that while ordinarily the high court should not entertain a writ petition by way of PIL questioning the constitutionality or validity of a statute or a statutory rule, this does not mean that in no case a PIL can be entertained challenging the validity of

38 (2013) 5 SCC 1.
39 AIR 2013 CHH 159.

a statute or a rule. According to the high court, interference by the court depends on the facts and circumstances as well as nature of the PIL. In the present case, the PIL raised the question as to whether the governor ought to have framed the Chattisgarh Tribes Advisory Council Rules, 2006 under sub para 3 of para 4(4(3)) of the fifth schedule of the Constitution in his discretion or the rules framed by the State of Chattisgarh and authenticated on his behalf were sufficient compliance of law. The high court held that the PIL had been filed for the benefit of the schedule tribes (ST), which were the most backward class of the society in the country. The fifth schedule was incorporated in Constitution to protect the tribals from exploitation and to preserve the land for their economic empowerment, with a view to securing social, economic and political justice to them and offering them equality of status and opportunity, thus promoting fraternity and dignity in the nation. In case there was a rule or statute that was against the welfare and the interest of the scheduled tribes and a PIL was filed challenging the same, then throwing out the PIL at the threshold on the ground that its validity could not be seen in a PIL jurisdiction might deny them the valuable rights conferred upon them by the Constitution. If the court did so, it would not only be failing in its duty in protecting their rights but would also be untrue to its oath. Holding that the PIL was maintainable, the high court, however, on merits, upholding the validity of the Chattisgarh Tribes Advisory Council Rules, 2006 framed under paragraph 4(3) of fifth schedule of the Constitution.

In *Rajendra N. Shah* v. *Union of India*,[40] the Gujrat High Court allowed the PIL seeking the quashing of the Constitution (97th Amendment) Act, 2011, introducing part IX B containing articles. 243ZH to 243ZT, as *ultra vires* the Constitution. It transpired that the constitutional amendment had been brought without following the procedure prescribed in the article 368(2) requiring the ratification by the majority of the state legislatures. Such requirement recognizes the federal structure of the Constitution, which was one of its basic structures. The PIL had contended that the power under article 368 of the Constitution itself was the basic structure of the Constitution and the fact that the impugned constitutional amendment was brought without taking recourse to article 368(2) of the Constitution rendered it unconstitutional.

XII PIL AND *LOCUS STANDI*

In *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*,[41] the competent authority had issued a caste certificate in favour of the appellant, on the basis of which he was appointed as senior clerk in the Municipal Corporation of Aurangabad. After the lapse of a period of nine years, the respondent challenged the validity of the certificate by way of a PIL, on the ground that the appellant had obtained employment by way of misrepresentation and that he, being Muslim, did not actually belong to the ST category. The matter eventually came up to the Supreme Court, which held that under ordinary circumstances, a third person,

40 (2013) 2 GLR 1698.
41 (2013) 4 SCC 465.

having no concern with the case at hand, cannot claim to have any *locus standi* to raise any grievance whatsoever. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding unless he satisfies the court/ authority that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order *etc*. in a court of law. However, in the exceptional circumstances, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the court, and a person, who has no personal agenda or object, in relation to which he can grind his own axe, approaches the court, then the court may examine the issue. Even if his *bona fides* are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed *suo motu* in such respect, though in exceptional circumstances. In the present case, the court found that the petitioner lacked the *locus standi* to maintain the PIL.

In *Bhartiya Janta Party* v. *State of West Bengal*,[42] the PIL before the Calcutta High Court challenged the validity of the decision of the Government of West Bengal to grant honorarium to the Imams and Muazzins of different mosques in the State of West Bengal. The high court referred to the case law to uphold the *locus standi* of the petitioners to file the PIL in public interest. The high court held that the question whether a person has the *locus* to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in light of changing awareness of legal rights and social obligations to take a broader view of the question of the *locus* to initiate a proceeding, be it under article 226 or under article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. In the instant case, under the garb of so called public purpose, public money is being spent in a manner which offends constitutional provisions. The petitioner would, therefore, have the *locus standi* to maintain the PIL.

In *B.K. Manish* v. *State of Chattisgarh*,[43] the PIL before the Chattisgarh High Court questioned whether the governor ought to have framed the Chattisgarh Tribes Advisory Council Rules, 2006 under sub para 3 of para 4(4(3)) of the fifth schedule of the Constitution in his discretion or the rules framed by the State of Chattisgarh and authenticated on his behalf were sufficient compliance of law. The high court found that the petitioner was neither a schedule tribe nor resided in the scheduled area but claimed to be interested in the tribal welfare. He had filed the PIL claiming it to be for their benefit. The high court held that the scheduled tribes may be ignorant and not in a position to come forward to protect their rights. In case, a spirited citizen took up a cause on their behalf, then the court would be abdicating its power if it threw out the petition on the ground of *locus standi*. The high court reasoned that the relevant point to see whether the petition was collusive or had it

42 AIR 2013 Cal. 215.
43 AIR 2013 CHH 159.

been filed for ulterior motives. If this was not so then declining to entertain the PIL would not be proper. The high court found no reasons to believe that the PIL was collusive or *malafide* or for ulterior purpose, and accordingly upheld the *locus standi* of the petitioner to file the PIL.

In *Indra Nagar Iqbal Colony* v. *State of J & K,*[44] the PIL before the Jammu & Kashmir High Court sought a writ of *mandamus* to direct the state to earmark/ allot land for purposes of public park or play ground. The high court found that the petitioners lacked *locus standi* to file the PIL inasmuch as they had no interest in the land in question. Further, the land in question was not earmarked as public park or playground by any competent authority. The high court dismissed the PIL holding that the relief sought was the prerogative of the executive and not of the court.

In *Zila Panchayat Abhiyantran Sangh* v. *State of U.P.,*[45] the PIL before the Allahabad High Court had challenged the merger order passed by state government, whereby services of private individual/junior engineer of the rural engineering services, were merged on post of Abhiyanta in Zila Panchayat Services. The high court noted that a PIL filed by an association of persons, whether registered or unregistered, would be maintainable only if its members are individually unable to approach court by reason of paucity or disability, *etc*. and the PIL involved a question of public injury and the association has a special interest in the subject-matter. A registered or unregistered association could not maintain a PIL for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights. The high court found that the petitioner association was seeking repatriation of private persons, and that no public interest at large was involved. The affected members of the association were fully capable to approach court to ventilate their grievances. The high court held that the petitioner had no *locus standi* to file the PIL.

In *Pawan Kumar Singh* v *State of Jharkhand,*[46] the PIL before the Jharkhand High Court sought a direction requiring the state to investigate into a double rape and murder by independent agency under supervision of court, as the murdered victims were found at police lines and there was involvement of the police officials as well as their family members. Moreover, there had been serious lapses on the part of the investigation carried out by the police. The high court held that the materials on record showed that investigation already handed over to CBI and hence, there was no reason to monitor investigation at this stage. Further, nothing had been stated in petition about credential of petitioner. The high court, accordingly, declined to entertain the PIL.

In *All Jharkhand Madrasa Students Union through its Secretary* v. *The State of Jharkhand through the Chief Secretary,*[47] the PIL before the Jharkhand High Court sought the quashing of an advertisement and a direction to

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44 AIR 2013 (NOC) 458 J&K
45 (2013) 8 ADJ 91
46 (2013) 4 J.L.J.R. 274.
47 (2013) 4 J.L.J.R. 299.

the authorities to consider applications of members of petitioner for appointment on the posts. The quashing of the advertisement was sought on ground that same was against policy of state government. The high court held that the relief sought could not be claimed in a PIL, and that if anybody was aggrieved, then that person could challenge the advertisement individually. Moreover, the court was not sitting in appeal over the policy decision taken by the state government. Indeed, the high court cannot replace the existing policy by even a better one.

In *Thol. Thirumavalavanedii* v. *Home Secretary*,[48] the PIL filed by a political party before the Madras High Court sought the formation of a forensic expert team headed by Former Director of Forensic Department to assist investigation of death of a person found murdered because of his inter caste marriage with a girl. The high court examined the concept of PIL to hold that PIL was litigation for the protection of the public interest. Articles 32 and 226 of the Constitution contained a tool which directly joined the public with the judiciary. PIL may be introduced in a court of law by the court itself *suo motu*, rather than the aggrieved party or any other third party. For the exercise of the court's jurisdiction, it was unnecessary for the victim of the violation of his or her rights to personally approach the court. In PIL, the right to file the action was given to a member of the public by the courts through judicial activism. PIL should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Also, PIL was not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. However, as far as criminal proceedings are concerned, the high court referred to the case law for the proposition that, even if there were million questions of law to be deeply gone into and examined in a criminal case registered against specified accused persons, it was for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants. In the present case, the high court held that the petitioner had no *locus standi* to file petition as he was not personally affected nor his fundamental rights have been directly or substantially invaded. Neither was there any imminent danger of any of his rights being invaded. It was the parents of deceased or other close relatives of deceased who were the affected parties and it was for them to approach court.

XIII *SUO MOTO* PIL

In *Court On Its Own Motion* v. *Union of India*,[49] the Supreme Court *suo moto* took into consideration the persistent media reports on the pitiable condition of the Amarnath yatris, the poor arrangements and the number of deaths during the

48 (2013) 5 CTC 113.
49 (2013) 7 SCALE 497.

yatra in the year 2012. The court directed the State of Jammu & Kashmir and the Amarnath Shrine Board to make due provisions for the yatris, preferably at Srinagar and Jammu. The state could, if necessary, provide for registration of the yatris at other places as well.

In *In Re: Regularization of Class IV Employees*,[50] the *suo moto* PIL by the Allahabad High Court, on its judicial side, examined the legality of the regularization of 355 daily labourers working in Allahabad High Court. The high court held that the cognizance of a PIL can be taken if the initiation is *pro bono publico*. The issue involved related to public employment on the establishment of one of the organs of the state, namely the judiciary. The powers, in so far as the high court was concerned, for controlling the service conditions of its employees vested in the chief justice of the high court as per article 229 of the Constitution. The power, therefore, had to be exercised in the interest of the institution and for its smooth running. Since the employment of class IV employees in the high court fell within the definition of public employment, such employment had to be made under rules and under orders of the competent authority. The high court held that the present case was not one of adversarial litigation. It was to streamline the use of the powers conferred under the Constitution, and the rules framed thereunder. The effort was rectify a genuine wrong that has crept into the system and, therefore, a PIL was the right method that could be utilized in order to establish transparency and credibility of the institution. In the instant case it was not a citizen who had come up before the court and who had to satisfy the court about his *locus standi*. Here the high court on the judicial side itself had taken cognizance for redeeming its past and setting its own house in order.

In *Suo Motu Proceedings Initiated on a Petition Received from Sri R.S. Praveen Raj* v. *Controller General of Patents, Designs and Trademarks, Government of Kerala, Represented by Chief Secretary, Sri. R.S. Praveen Raj (Petitioner Made as Respondent) and The Attukal Bhagavathy Temple Trust Represented by its Managing Trustee*,[51] a PIL was registered *suo moto* by the Kerala High Court on the basis of a petition sent by one R.S. Praveen Raj. The said person had complained that the registration of a trademark of the "picture of Attukal deity" and the appellation "Sabarimala of Women" are against the provisions of the Trade Marks Act, 1999, as also in violation of articles 25 and 26 of the Constitution. The high court disposed off the matter after finding on facts that were no such violations.

XIV PIL AND SERVICE MATTERS

In *State of Punjab* v. *Salil Sabhlok*,[52] the PIL filed before the Punjab & Haryana High Court under article 226 of the Constitution sought a *mandamus* directing the

50 (2013) 8 ADJ 43.
51 2013 (4) KHC 1.
52 (2013) 5 SCC 1.

state government to frame regulations governing the conditions of service and appointment of the chairman and/or the members of public service commission as envisaged in the article 318 of the Constitution, as well as a direction restraining the state government from appointing its appointee as the chairman of the Punjab Public Service Commission. Upon appeal, the Supreme Court held that it was important to appreciate that the chairperson of a public service commission holds a constitutional position and not a statutory position. Such PIL was not just a service matter in which only the aggrieved party has the *locus* to initiate a legal action in the court of law. The PIL was a matter affecting the interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his *bona fides* are not in doubt.

In *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*,[53] the competent authority had issued a caste certificate in favour of the appellant, on the basis of which he was appointed as senior clerk in the Municipal Corporation of Aurangabad. After the lapse of a period of nine years, the respondent challenged the validity of the certificate by way of a PIL, on the ground that the appellant had obtained employment by way of misrepresentation and that he, being Muslim, did not actually belong to the ST category. The matter eventually came up to the Supreme Court which inter alia held the PIL was not permissible so far as service matters are concerned.

In *In Re: Regularization of Class IV Employees*,[54] the *suo moto* PIL by the Allahabad High Court, on its judicial side, examined the legality of the regularization of 355 daily labourers working in Allahabad High Court. The high court held that though in service matters, PILs were rarely admissible, in the instant case, it was the cause of the high court itself that had been noticed by the judges for resolving an intricate problem relating to the workforce of the high court. Public interest in the present matter had to be viewed from the angle of a public image.

XV PIL AND PROCEDURAL LAW

In *Bhopal Gas Peedith Mahila U. Sangat* v. *Union of India*,[55] the Supreme Court noted that that a SLP had been filed in the Supreme Court from a matter before the Madhya Pradesh High Court wherein the high court had been monitoring the removal of toxic waste lying in and around the factory of Union Carbide Corporation Ltd. Bhopal. A Bench of the Supreme Court, accordingly, was now monitoring the removal of the aforementioned toxic materials/waste. To avoid conflict of orders, the Supreme Court found it proper to delete the directions passed by it earlier in its judgement of 09.08.12 with regard to the disposal of toxic materials/waste lying in and around the factory of Union Carbide Corporation Ltd. Bhopal.

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53 (2013) 4 SCC 465.
54 (2013) 8 ADJ 43.
55 (2013) 1 SCALE 379.

In *M/s Monnet Ispat and Energy Limited* v. *Jan Chetna*,[56] the Division Bench of the Delhi High Court had entertained and allowed the petition filed by the respondent no.1 as a PIL for setting aside an order passed by the National Environment Appellate Authority (NEAA) and remanded the case to the competent quasi judicial forum for being decided on merits. As per the rules relating to distribution of causes between the single judge, the division bench and larger benches, the matter could have been heard only by the single judge of the high court. On appeal, the Supreme Court set aside the order of the division bench of the high court and directed that the petition of the said respondent be listed before the single judge, while emphasizing that every bench of the high court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, else the sanctity of the rules relating to distribution of causes between the single judge, the division bench and larger benches would be lost. The single judge of the high court was requested to decide the same without being influenced by the observations contained in the order of the division bench, or of the Supreme Court.

In *Achuthanandan V.S.* v. *State of Kerala*,[57] the leader of the opposition filed the PIL before the Kerala High Court seeking a direction to the state to hand over investigation of the infamous 'Ice cream Parlour' case to the C.B.I. The PIL alleged that a relative of a sitting minister had stated in a press conference that he had influenced top ranking police officers, judges and prosecutors to scuttle investigation into the involvement of the minister in the case. On the basis of this allegation, the police registered a case against the said minister and others, including the person who made the allegation. The PIL contended that since the persons alleged to be involved in the case were influential, the state police would not conduct proper investigation and would only drag on the matter. It was also pointed out that the investigation presently done revealed a sordid tale. On the other hand, Advocate General appearing for the state pointed out that final report had already been filed in the case and the magistrate was seized of the matter and the high court will not be justified in usurping power of the magistrate under section 173(8) of the Cr PC. It was further contended that the high court would not be justified in entering any finding on legality or sanctity of the final report, which is pending consideration of the magistrate. The high court held that while considering PIL, one need not adhere to strict compliance of norms applicable to adversarial litigation, but nevertheless one cannot ignore the fact in the present case, the prayer for investigation by a special agency like CBI (an independent agency) was to be considered primarily on the premise that a functionary of the state, a minister, was involved and the police of the state would be helpless in booking a case against him or charge-sheeting him. Even if the technicalities of adversarial litigation was not applicable, one cannot close ones eyes to the fact that no person can be condemned or prejudiced by judicial pronouncement in which he was not given

56 (2013) 11 SCALE 612.
57 ILR 2013 (4) Ker 190.

an opportunity of being heard. The high court took the view that the rule of alternative remedy cannot be said to be wholly inapplicable to arena of PIL, where aggrieved persons themselves do not approach the court. After a detailed precedential survey, the high court held that once the final report had been filed by the investigating agency before the magistrate and the report was pending consideration of the magistrate, the high court would not be justified in ordering further investigation by the CBI at such stage. The court held that the consideration of the final report may result in further investigation or acceptance of the final report and the aggrieved parties were always at liberty to assail the finding. The high court observed that it was not curtailing anybody's enthusiasm by dismissal of the PIL nor closing the scope of a CBI enquiry. However, without giving an opportunity to the competent magistrate, who is the statutory authority under the Cr.PC to record his finding, it would not be proper on the part of the high court to have a roving enquiry into the final report and the CD at this stage. Accordingly, the high court did not intervene in the matter.

In *Bharath Samrakshana Samithi* v. *The Principal Secretary, Government of Karnataka, Revenue Department*,[58] the PIL before the Karnataka High Court sought the quashing of the order granting occupancy rights to respondent in respect of land in question. The high court found that the petitioner had sought adjournments from time to time without any reasonable cause, but for ulterior motive. The high court dismissed the PIL on ground of delay and latches.

XVI MISUSE OF PIL

In *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*,[59] the respondent had belatedly challenged the validity of the caste certificate of the appellant by way of a PIL on the ground that the appellant had obtained employment by way of misrepresentation and that he, being Muslim, did not actually belong to the ST category. The matter eventually came up to the Supreme Court which found that the respondent had not been pursuing the matter in a *bona fide* manner nor raised any public interest. The Supreme Court allowed the appeal, holding that the respondent was liable to pay costs for abusing the process of law. The Supreme Court reiterated its caution to the courts against entertaining PIL filed by unscrupulous persons; as such meddlers do not hesitate to abuse the process of the court. The Supreme Court reasoned that 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 was invoked, the court must examine the case to ensure that there was in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there was no abuse of the process of court and that "ordinarily meddlesome bystanders are not granted a visa".

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58 (2013) 6 KarLJ 644.
59 (2013) 4 SCC 465.

In *Arun Kumar Agrawal* v. *Union of India*,[60] the PIL before the Supreme Court alleged that the appointment of the Chairperson of SEBI was *malafide* and a result of manipulation, misrepresentation and suppression of vital material before the Search cum Selection Committee and the Appointment Committee of the Cabinet (ACC). It was contended that the appointment did not fulfill one of the eligibility condition as laid down in section 4(5) of the SEBI Act nor the qualification contained in the government communication requiring chairman to be a person of high integrity. The Supreme Court found on facts that the petitioner had unjustifiably attacked the integrity of the entire selection process, and dismissed the PIL holding that the petitioner failed to satisfy the test of utmost good faith which is required to maintain a PIL.

In *M. Manohar Reddy* v. *Union of India*,[61] the PIL filed before the Supreme Court sought a writ in the nature of *quo warranto,* quashing the appointment of the respondent no. 3 as a judge of the Andhra Pradesh High Court and a writ in the nature of *mandamus* commanding the Bar Council of Andhra Pradesh to cancel his enrollment as an advocate. The Supreme Court held on facts the writ petition professed to have been filed in public interest was, in its view, a ruse to malign the said respondent, and dismissed the same as wanting in *bona fides*, and with costs.

In *Zila Panchayat Abhiyantran Sangh* v. *State of U.P.*,[62] the PIL before the Allahabad High Court had challenged the merger order passed by state government, whereby services of private individual/junior engineer of the Rural Engineering Services, were merged on post of Abhiyanta in Zila Panchayat Services. The high court held that when a particular person was the object and target of the petition styled as a PIL, the court has to be careful to see whether the attack in guise of public interest was really intended to achieve a private vendetta, personal grouse or some other *mala fide* object. Moreover, when a PIL was not maintainable in service matters. In the present case, the high court found that the PIL was actuated by malice against a person impleaded as a respondent.

In *A.R. Gokulakrishnan* v. *The Secretary, Union Public Service Commission*,[63] the PIL before the Madras High Court sought a direction requiring the authorities to commence detailed enquiry against the seventh respondent on ground of unlawful activities and misuse of official power. The high court found on facts that the PIL was a sequel to private dispute between the petitioner and the seventh respondent. While the petitioner alleged that the seventh respondent acting in high handed manner abusing his official position, the seventh respondent accused the petitioner of conducting "Katta Panchayat" and attempting to grab public property. The high court, while declining to decide the dispute between the petitioner and the seventh respondent, held that the district administration had failed to protect the government property and it appeared that certain private parties had been dealing with the property as if, it is their private patta land. The high court, while dismissing the

60 (2013) 13 SCALE 442.
61 (2013) 3 SCC 99.
62 (2013) 8 ADJ 91.
63 (2013) 8 MLJ 319.

relief sought for by the petitioner, required the authorities to remove all the encroachments on the land in question, and take immediate steps to erect a fence around the same.

In *Bhawan Singh* v. *Heavy Engineering Corporation Limited*,[64] the PIL before the Jharkhand High Court sought the quashing of the circular by the competent authority by which it had enhanced rate of water charges more than prevailing rate of water charges. The high court found that the water charges which were fixed by the authority much earlier in point of time were meagre. The water charges have been increased after several years and whatever amount was collected by way of the water charge was being paid to the Government of Jharkhand. The enhancement of charges towards water consumption was on no profit no loss basis. The high court took the view that the grievance of the petitioner could not, in any case, be litigated as a PIL, and dismissed the same with costs of Rs. 25,000/-.

In *Vivek Kumar* v. *State of Jharkhand through the Chief Secretary*,[65] the PIL before the Jharkhand High Court was filed against acquisition proceedings in respect of surplus land, in regard to which an appeal was pending for decision before appropriate appellate authority under Land Acquisition Act of 1961. The high court found that the PIL involved the question about property rights of the legal heirs of original holder of land. The high court, accordingly, saw no reason to entertain the PIL.

In *Sri D. Govinda Rao* v. *State of Karnataka*,[66] the petitioners filed the PIL before the Karnataka High Court for return of such land acquired under the Land Acquisition Act, 1961. which had been found to be in excess of what was required for development of the Hubli airport. The high court found that there was no evidence about original acquisition of land being based on illegal or arbitrary decision. No *malafide* could be attributed in successive decisions of the authorities for acquiring land. In view of scheme of Act, the petition did not find support from any legal provision on basis of which petitioners were entitled to such relief. The high court held that the PIL was non maintainable as land was acquired for public purpose. Moreover, it the petitioners were the original owners of the lands acquired for the Hubli Airport, they certainly cannot maintain the writ petition in public interest as it would be an abuse of the process of the court.

XVII CONCLUSION

The survey of PIL cases for the year 2013 reveals that the Supreme Court and the high courts have generally been proactive in discharging their constitutional obligation to protect fundamental rights of the poor and the bewildered. The cases under survey do fit into the pattern set in *Hussainara Khatoon's* case[67] in 1979 and adopted by the courts over the years in subsequent cases. This pattern includes the remedial intent of PIL requiring the court to transcend the traditional

64 (2013) 4 J.L.J.R.700.
65 (2013) 4 J.L.J.R.697.
66 ILR 2013 Karkar 5748.
67 AIR 1979 SC 1360, 1369, 1377.

function of adjudication; the non-adversarial and collaborative nature of PIL; the absence of the traditional *lis;* the typical sprawling and amorphous structure of parties to the litigation; the active and inquisitorial role of the judge to develop issues not even directly raised in the original action; the acceptance of letters or press reports as the basis of the PIL; the flexibility of procedural law; the grant of immediate and interim remedial relief once a *prima facie* case is made out; the reliance on the unenforceable Directive Principles of State Policy contained in part IV of the Constitution to read new rights into Fundament Rights guaranteed by part III of the Constitution, particularly into the right to life and personal liberty in terms of article 21; the relaxation of the rule of *locus standi* to confer standing on any person, acting *pro bono*, to approach the court for the vindication of the rights of the disadvantaged sections of society or, as subsequently held, for the vindication of diffuse, meta-physical and collective rights. Such distinctive features of PIL mark the departure from the principles underlying the common law, and make the jurisprudence of PIL unique to India.

The only standard to judge whether such judicial role entailed by PIL is justified is whether it enjoys constitutional sanction. The redefined judicial role cannot be termed to be illegitimate in light of the constitutional scheme providing for an independent judiciary having extensive jurisdiction over the acts of the legislature and executive;[68] yet another departure from the strict application of the doctrine of separation of powers. There is no limitation in article 32 or article 226 of the Constitution requiring the writ courts to cling onto anglo-saxon jurisprudence and the resultant formalism. Rather, the said articles confer the widest possible powers upon the Supreme Court to enforce fundamental rights and in case of high courts, any legal right. In other words, the Constitution specifies the function of enforcing such rights; it does not prescribe the means to perform such function. Hence, it the court opines that legal formalism and procedural technicalities are impeding its attempt to perform its function, it is under a constitutional obligation to adopt new tools and remedies to achieve the specified end. It will be obvious to anyone familiar with Indian bureaucracy that if the court did not play an active role in ensuring the implantation of its orders, the orders would soon be reduced to pious exhortations. Hence, if the new tools and remedies necessarily include assuming a supervisory role in curing institutional malaise and consequently performing administrative functions, so be it. Similarly, if the court has to impinge on policy issues, or lay down a policy *de novo* or frame guidelines where none exist, for constitutional or legal rights to be vindicated, it must do so. The only qualification is that such intervention in administrative or policy issues must only be to the extent necessary for enforcement of fundamental rights in the case of the Supreme Court, and of any legal right in the case of the high courts. If the court succumbs to the temptation of crossing this line, it would indeed be guilty of usurping powers of the executive or the legislature.

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68 *Ram Jawaya* v. *State of Punjab*, AIR 1955 SC 549.