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PUBLIC INTEREST LITIGATION

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I INTRODUCTION

PUBLIC INTEREST Litigation (PIL) was originally conceived as a non Anglo-Saxon remedial jurisprudence that redefined the judicial role by requiring the Supreme Court to transcend the traditional judicial function of adjudication to assume new roles like that of an investigator, a monitor, a social reformer, an administrator, a legislator or simply an ombudsman - all necessitated by its obligation, and to the extent of its obligation, to protect fundamental rights of the poor, marginalised and vulnerable sections of society lacking access to courts. The scope of PIL before the High Court was wider inasmuch as article 226 of the Constitution enabled the High Court to entertain such matters for the vindication of any legal right.

The distinctiveness of PIL as originally conceived in *Hussainara Khatoon* v. *State of Bihar*[1] can perhaps be best set out by comparing it with public interest mechanisms like class action or representative action under Order 1 Rule 8 of the Code of Civil Procedure Code, 1908.

PIL, as conceived, invariably lacked a dispute or *lis.* It is non-adversarial, and rather a collaborative effect of the parties and the court. The judge plays an active role and can go beyond the pleadings, issues and evidence on record. Should there be a vacuum in a given field of law or policy, the court could "legislate" or lay down policy *de novo* if it felt it necessary to do so to protect fundamental rights. There is flexibility in application of procedural law. Public policy doctrines like *res judicata* and estoppel are inapplicable. The principle of *locus standi* is relaxed to enable any person acting *bona fide* to move the court on behalf of the section of persons lacking access to courts on account of poverty or any other disability. The PIL action can be based on press reports, telex or letter to the court and can be initiated even *suo moto,* though in recent years, the court has been hesitant to act only on the basis of press reports, unsupported by research or data. The petitioner is released from the burden

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1 AIR 1979 SC 1360.

of proving the allegation. There is typically an amorphous nature of parties. The petitioner is not *dominus litus*, and the Court can continue the action should the petitioner withdraw his or her name from the action. The grant of the relief sought in the PIL is through immediate and interim remedial orders. The cohesion between rights and remedies is diluted. The Court may be unable to provide remedies despite recognition of an inalienable fundamental right of every individual (like food, drinking water, shelter) or may give relief to the marginalized who lack a right (like provision of alternate accommodation to leprosy afflicted persons prior to their eviction from encroachment on government land).

By contrast, class action under Order 1 Rule 8 of the Code of Civil Procedure within the Anglo-Saxon paradigm is adversarial in nature and must have a dispute or *lis* to activate the judicial process of adjudication. The role of the judge, who is bound by pleadings and issues raised and evidence led, is passive in such adjudication process. There is strict adherence to procedural law to ensure level playing field to both parties as also to public policy doctrines like *res judicata* and estoppel. Only the aggrieved person can initiate the judicial process. The petitioner is to prove the case through legally admissible evidence. Burden of proof is on the person making the allegation. The identity of the parties to the dispute is well defined. The petitioner is the *dominus litus* and can withdraw his or her action following which the Court is *functus officio*. The Court would be slow in issuing interim relief unless satisfied of *prima facie* case, balance of convenience and irreparable prejudice and injury that cannot be compensated in terms of money. The action is based on the maxim – where there is a right, there is a remedy.

The Supreme Court did not, however, stop at redefining the judicial role to merely protect the fundamental rights of the disempowered and marginalized as had been originally conceived. Instead, it went further in *S.P. Gupta* v. *Union of India*[2] to include within the jurisprudence of PIL, cases having a *lis* and involving 'diffuse, collective and meta-individual rights' of the public at large and breach of the public duties owed to them. Instances of such matters are those relating to governance, say, environment pollution, corruption, electoral reforms or simply maintenance of the rule of law.

PIL relating to governance issues could well have been litigated as class actions or representative actions under Order 1 Rule 8 of the Code of Civil Procedure, complete with the checks and balances of the traditional common law system. A key implication of treating such matters as PIL is that the Court dealing with such matters is relieved from the limitations imposed by the common law jurisprudence. These limitations on the Court, at the cost of repetition, require the judge to be a neutral umpire and to follow the adversarial process, bind the judge to consider only those legal issues that have been raised, mandate that the judge must observe procedural technicalities such as issuing of notice to all the community members, and necessitate development of

2 AIR 1982 SC 149.

detailed evidence at the trial court level. These requirements are imperative to standardize the adjudication process and to prevent subjective, and hence arbitrary, exercise of judicial power.

It is the expansion of the scope of PIL to cover cases involving governance or a diffuse or collective right that has had profound implications for the power tussle between the judiciary on one side and the executive and legislature on the other, with the judiciary assuming immense 'political power' over the other two, a position that continues till date. Such extension also enables an unscrupulous litigant to file a PIL ostensibly in public interest, but in fact to serve personal or private interest or with an oblique or extraneous motive, or merely for publicity. Such cases are at the cost of the poor, marginalized and vulnerable sections of society for whom PIL was originally conceived.

Another unfortunate fall out of such expansion of the scope of PIL has been that over the last several years, it is predominantly matters relating to governance or to the protection of diffuse, collective and meta-individual rights of the public at large that have been brought to Court. The same trend is evident in the current survey, with there being only a handful, though notable, cases pertaining to the poor, marginalised and vulnerable sections of society, who, on account of poverty, disability or helplessness, lack access to the judicial process.

II PIL AND *LOCUS STANDI*

In *Rashtriya Kisan Mazdoor Sangathan* v. *State of Uttar Pradesh*,[3] the PIL before the High Court of Allahabad had been filed by the Rashtriya Kishan Mazdoor Sangathan which had been espousing cause of the farmers for ensuring payment of balance cane dues along with statutory interest. The PIL challenged the power of Cane Commissioner to waive interest on delayed payment of cane price under U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. The court held that payment of interest for delayed payment was a right and not bounty, and directed payment of the cane dues inclusive of interest found that a general waiver had been accorded for three years without application of mind. The court set aside such decision for waiver of interest for all three years and required the Cane Commissioner to look into grievance of farmers and then examine claim of each and every company.

The court rejected the contention that the petitioner had no locus standi to file the PIL as the matter of interest is inter-se Cooperative Societies, Sugar Mills and Cane Commissioner and that Cooperative Societies have not come forward assailing the action of waiving of interest. The Court found from the record that right from the beginning, the Rashtriya Kishan Mazdoor Sangathan had been espousing the cause of farmers and time and again bona-fidely. No contrary or counter material had been produced to show or substantiate that public cause is not being espoused by petitioner's

3 2017 (3) ALJ 290.

Sangathan. The Court referred to the case law to uphold the locus standi of the petitioner, taking the view that its credentials could not be doubted and that there was no personal gain, private motive or oblique motive in filing petition.

In *Abhishek Shukla* v. *High Court of Judicature, Allahabad*, [4] the PIL by a lawyer before the Allahabad high court sought a direction commanding the official respondents to immediately remove the encroachment made on a plot of land allotted to the High Court and Advocate General's office in Civil Station, Allahabad. The allegation of encroachment was initially made against an unknown person, who subsequently was identified as the respondent Waqf which had recently constructed a Masjid on the portion of the plot known as "Masjid High Court". The High Court upheld the locus standi of the lawyer to file the PIL who pleaded that "this petition is purely public interest litigation and he has no private interest except the welfare of this Hon'ble institution, as a responsible Advocate". The High Court held the 'petitioner, who is a practicing lawyer, had a vital interest not only in the independence of judiciary, but also in its well-being. The Court observed that an Advocate practicing in the Court and being a member of the Bar Association had a special interest in preserving the independence, integrity and secular character of the judiciary, and if its independence, integrity and secular character was threatened by any act of the respondent Waqf, he would naturally be concerned about it, because he was an equal partner with judges in the administration of justice.

In *Md Aslam @ Bhure* v. *State of Uttar Pradesh*,[5] the grievance before the Supreme Court was that there was no notification appointing a Special Judge to try the offences committed at Ayodhya (Faizabad) in connection with the Babri Masjid demolition case, after the Allahabad High Court struck down the pending proceedings in the Special Court at Lalitpur on the ground that there had been no consultation with the High Court. The Supreme Court found that there was indeed a Special Court at Rai Bareli which was notified to try the said offence. The Court declined the request of the petitioner to have the Special Court at Lucknow to try the case, holding that this was a matter in which the Government in consultation with the High Court has constituted a Special Court and that the High Court in its discretion has constituted the Special Court at Rae Bareli. The Court held that no person, much less the petitioner in public interest, could claim any Special Court at any particular place for trial of any criminal case.

III PIL AND LACHES

In *P Pugalenthi* v. *High Court of Judicature at Madras,*[6] the PIL before the Madras high court sought a declaration that the initial appointments of the private

4 2017 6 AWC 6161 All.

5 2017 (7) SCC 479.

6 2017 (6) CTC 465.

respondents in the High Court were null and void and consequential direction to the High Court to issue a public advertisement for filling up the resultant vacancies in accordance with law. The challenge to the appointments was on the sole ground that no public advertisements had been issued, the posts were not given publicity and persons, who could have applied could not do so as they had no knowledge of the recruitment. The Court considered whether it should interfere with the appointments, which were made by the High Court, 12 to 15 years ago. The persons appointed had all been confirmed in service. They had been rendering service for years and some of them had even been promoted to higher posts.

The Court held that it was true that there was no limitation for filing a writ petition and the High Court was not debarred from entertaining a delayed Writ Petition. However, High Courts should refrain from exercising discretionary jurisdiction in case of delay and laches, particularly where such delay and laches had given rise to accrual of rights. The Court examined the jurisprudence of PIL that has emerged over the last several decades. According to the Court, the "object of Public Interest Litigation is to make justice available to the Public. In *pro bono publico* proceedings, the Courts intervene when the attention of the Courts is drawn to illegality either by any overt action or by any inaction on the part of the State. Pro bono Public Interest Litigation gives way to substantive concern for deprivation of rights. The Rule of locus standi has been diluted. In a Public Interest Litigation, the Court is not simply a disinterested and dispassionate adjudicator, but an active participant in the dispensation of justice. The key facts in Public Interest Litigation are deprivation of rights-the need to secure the rights of a deprived class".

The Court held that while entertaining and deciding a PIL, the Courts had to adhere to the limits of its extraordinary power of review, including restraint in case of existence of an alternative remedy, except in certain exempted circumstances such as violation of fundamental rights, violation of principles of natural justice, perversity, want of jurisdiction and the like. Similarly, a Court could not ignore gross delay of decades and entertain a Writ Petition just because the Writ Petition was by way of a PIL and a petitioner contended that he did not know of the illegality earlier. In the present PIL, the Court noted that there was not a whisper in the Writ Petition of the reason for the delay in filing the Writ Petition. The Court, while referring to the case law for the proposition that PIL was not permissible in service matters, also observed that in the present PIL, the entire dispute related to Selection and Appointment.[7]

The Court held that it was not necessary for it to go into the question of whether the Writ Petition should have been entertained as PIL or not in view of its observation that the Writ Petition was hopelessly barred by delay. The Court declined to entertain the PIL, while observing that it was expected that in future that the High Court would issue public advertisements for direct recruitment to all permanent sanctioned posts in the High Court.

7 *Id.* at 25.

In *Worli Hill Association* v. *State of Maharashtra*,[8] the PIL before the Bombay high court complained encroachment by slum dwellers upon land reserved for recreation. The Court found that a Slum Rehabilitation Scheme had been prepared by the State in 1991 in terms of which if the slum dwellers were rehabilitated free of cost on the land, the builder/developer would get FSI and an incentive so that he could after rehabilitation of the slum dwellers on the plot free of cost, construct a building having a sale component, which would compensate for the cost of construction of the rehabilitation component. It was an admitted position that the project was sanctioned in 1996. CRZ clearance was given in 1998 and by the time the PIL was filed, the builder/developer had already constructed the rehabilitation component, rehabilitated the slum dwellers, constructed 13 floors of the said building, obtained completion/ occupation certificates and sold the flats in the said building creating third party rights. The petitioners had no explanation for the delay in approaching the Court almost 8 years after the scheme was commenced and was nearing completion. The Court dismissed the PIL holding that the principle of laches and gross delay was applicable to PILs, and that in this matter there was such gross delay.

IV PIL AND CONSTITUTIONAL VALIDITY OF STATUTES AND PRACTICES

In *Binoy Viswam* v. *Union of India*,[9] the PIL before the Supreme Court impugned the constitutional validity of section 139AA of the Income Tax Act, 1961 which provision had been inserted by the amendment to the said Act vide Finance Act, 2017. As per the section 139AA, in the application forms for allotment of Permanent Account Number (PAN) as well as in the income-tax returns, the assesses were obliged to quote Aadhaar number. This was necessitated on any such applications for PAN or return of income on or after July 1, 2017, which meant from that date quoting of Aadhaar number became essential. Proviso to sub-section (1) gave relaxation from quoting Aadhaar number to those persons who did not possess Aadhaar number but had already applied for issuance of Aadhaar card. In their cases, the Enrolment ID of Aadhaar application form was to be quoted. It would mean that those who would not be possessing Aadhaar card as on July 1, 2017 might have to necessarily apply for enrolment of Aadhaar before July 1, 2017. The effect of this provision was that every person who desired to obtain PAN card or who was an assessee had to necessarily enroll for Aadhaar. It made obtaining of Aadhaar card compulsory for those persons who are income-tax assesses. Proviso to sub-section (2) of section 139AA of the Act stipulated the consequences of failure to intimate the Aadhaar number. In those cases, PAN allotted to such persons would become invalid not only from July 01, 2017, but from its inception as the deeming provision in this proviso mentioned that PAN would be invalid as if the person had not applied for allotment of PAN, i.e. from the very beginning. Sub-section (3), however, gives discretion to the Central Government to

8 2017 SCC Online Bom 8260.

9 (2017) 7 SCC 59.

exempt such person or class or classes of persons or any State or part of any State from the requirement of quoting Aadhaar number in the application form for PAN or in the return of income.

The PIL asserted that though Aadhaar Act prescribed that enrolment under the Act was voluntary and gave choice to a person to enroll or not to enroll himself and obtain Aadhaar card, this compulsive element thrusted in section 139AA of the Act makes the said provision unconstitutional. The PIL questioned the validity of section 139AA of the Act primarily on articles 14 and 19 of the Constitution.

The Court took the view that the Aadhaar Act was enacted to enable the Government to identify individuals for delivery of benefits, subsidies and services under various welfare schemes. As per the Government and UIDAI itself, the requirement of obtaining Aadhaar number was voluntary. On the one hand, for the purposes of Income Tax Act, 1961, section 139AA made it compulsory for the assesses to give Aadhaar number which meant insofar as income tax assesses are concerned, they had to necessarily enroll themselves under the Aadhaar Act and obtain Aadhaar number which would be their identification number as that has become the requirement under the Income Tax Act, 1961. A harmonious reading of the two enactments, the Aadhaar Act and the Income Tax Act, 1961 clearly suggested that whereas enrollment of Aadhaar is voluntary when it comes to taking benefits of various welfare schemes even if it is presumed that requirement of section 7 of Aadhaar Act that it is necessary to provide Aadhaar number to avail the benefits of schemes and services, it was upto a person to avail those benefits or not. On the other hand, purpose behind enacting section 139AA was to check a menace of black money as well as money laundering and also to widen the income tax net so as to cover those persons who were evading the payment of tax. If the PAN of a person was withdrawn or was nullified, it definitely amounted to placing restrictions on the right to do business as a business under article 19(1)(g) of the Act. The provision was aimed at seeding Aadhaar with PAN. One of the main objectives was to de-duplicate PAN cards and to bring a situation where one person was not having more than one PAN card or a person was not able to get PAN cards in assumed/fictitious names. In such a scenario, if those persons who violated section 139AA of the Act without any consequence, the provision would be rendered toothless. It was the prerogative of the Legislature to make penal provisions for violation of any law made by it. In the instant case, requirement of giving Aadhaar enrolment number to the designated authority or stating this number in the income tax returns was directly connected with the issue of duplicate/fake PANs.[10]

The Court held that Parliament was fully competent to enact section 139AA of the Act. There was no conflict between the provisions of Aadhaar Act and section 139AA of the Income Tax Act inasmuch as when interpreted harmoniously, they operate in distinct fields. Section 139AA of the Act was not discriminatory nor did it offend the equality clause enshrined in article 14 of the Constitution. Section 139AA was

10 *Id.* at 115.

also not violative of article 19(1)(g) of the Constitution insofar as it mandated giving of Aadhaar enrollment number for applying PAN cards in the income tax returns or notified Aadhaar enrollment number to the designated authorities. Further, proviso to sub-section (2) thereof has to be read down to mean that it would operate only prospective. The validity of the provision upheld is subject to passing the muster of article 21 of the Constitution, which was the issue before the Constitution Bench.

The Court did note that a large section of citizens felt concerned about possible data leak, even when many of those supported linkage of PAN with Aadhaar. This was a concern which needed to be addressed by the Government. It was important that the apprehensions were assuaged by taking proper measures so that confidence was instilled among the public at large that there was no chance of unauthorized leakage of data whether it was done by tightening the operations of the contractors who were given the job of enrollment, they being private persons or by prescribing severe penalties to those who were found guilty of leaking the details, was the outlook of the Government. However, measures in this behalf were absolutely essential and it would be in the fitness of things that proper scheme in this behalf was devised at the earliest.

Thus, the Court disposed off the PIL holding that that those who were not PAN holders, while applying for PAN, they were required to give Aadhaar number. This was the stipulation of sub-section (1) of section 139AA. At the same time, as far as existing PAN holders were concerned, since the impugned provisions were yet to be considered on the touchstone of article 21 of the Constitution by the Constitution Bench of the Court, including on the debate around Right to Privacy and human dignity, etc. as limbs of article 21, till the aspect of article 21 was decided by the Constitution Bench a partial stay of the aforesaid proviso was necessary. Those who had already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of section 139AA of the Act. Those who still wanted to enroll were free to do so. However, those assessees who were not Aadhaar card holders and did not comply with the provision of section 139(2), their PAN cards were not to be treated as invalid for the time being.[11]

In *Shayara Bano* v. *Union of India*,[12] the PIL before the Supreme Court challenged the constitutional validity of instant Triple Talaq (talaq-e-bidat). The Supreme Court, by a majority of 3 : 2 held that the practice was unconstitutional and violative of articles 14 and 15 and not protected by the right to religion contained in article 25. The other ground on which the practice was struck down was Triple Talaq against basic tenets of Quran and violated Sharia. The view taken was that such practice was in any event not an integral part of the religion. The dissenting judgement held that the Triple Talaq was integral to Islam in India and part of personal law; it had been a practice which had prevailed for a long time and that it was not hit by articles

11 *Id.* at 128.

12 AIR 2017 SC 4609.

14, 15 and 21. The dissenting judgement however noted that this practice was not present even in theocratic Muslim States, and exercised its power under article 142 of the Constitution to direct the Union of India to frame an appropriate law in this regard. The minority held that till such time as legislation in the matter is considered, Muslim husbands would be injuncted from pronouncing 'talaq-e-biddat' as a means for severing their matrimonial relationship. The Court held that the injunction, shall in the first instance, be operative for a period of six months. If the legislative process commenced before the expiry of the period of six months, and a positive decision emerged towards redefining or doing away altogether with Triple Talaq, the injunction would continue, till legislation was finally enacted, failing which the injunction would cease to operate.

In *Independent Thought* v. *Union of India*,[13] the PIL before the Supreme Court raised the issue was whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age was rape. The Court took pains to clarify that it had refrained from making any observation with regard to the marital rape of a woman who was 18 years of age and above since that issue was not before it at all. The Court noted that exception 2 to section 375 of the Indian Penal Code, 1860 answers this issue in the negative, but in its opinion sexual intercourse with a girl below 18 years of age was rape regardless of whether she was married or not. The Court took the view that the exception carved out in the IPC created an unnecessary and artificial distinction between a married girl and an unmarried girl child and had no rational nexus with any unclear objective sought to be achieved. The Court held that the "artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child. The artificial distinction is contrary to the philosophy and ethos of article 15(3) of the Constitution as well as contrary to article 21 of the Constitution and our commitments in international conventions. It is also contrary to the philosophy behind some statutes, the bodily integrity of the girl child and her reproductive choice." The Court found it equally dreadful that "the artificial distinction turns a blind eye to trafficking of the girl child and surely each one of us must discourage trafficking which is such a horrible social evil". The Court held that apart "from constitutional and statutory provisions, constitutional morality forbids us from giving an interpretation to exception 2 to section 375 of the IPC that sanctifies a tradition or custom that is no longer sustainable".

In *Ashok Pande* v. *Union of India*,[14] the PIL before the Lucknow Bench of the Allahabad High Court assailed the vires of section 2 of The Salaries and Allowances of Ministers Act 1952 and section 2(e) of Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 being ultra vires of Constitution. The PIL also sought mandamus commanding respondents not to give effect to the definition of "Ministers" as defined in the aforesaid Acts, to treat all Ministers equal and to

13 (2017) 10 SCC 800.

14 2017 (11) ADJ 714.

place a Judge of the High Court at par with Ministers. The Court examined the constitutional scheme to hold that it did not find that article 74, 75, 163 and 164 in any manner restricts word "Ministers"' to "Cabinet Ministers" or "Ministers of Cabinet". Nor could the petitioner show anything from the Constitution to demonstrate that the term "Council of Ministers" would include within its ambit only the set of Ministers which are given Cabinet rank and not any other category of Ministers. In absence of anything to show that when the Constitution to the term "Ministers", it contemplates only one category of Ministers namely "Cabinet rank Ministers", the Court found no merit in the submission that by defining the term "'Ministers" under Act 1952 and U.P. Act 1981, respective Legislatures by including "Ministers of State" or "Deputy Minister" have in any manner acted beyond legislative competence by contravening any provision of Constitution. The Court held that the plea that Judges of High Court should be treated at par with Ministers and a mandamus be issued to respondents to this effect was thoroughly misconceived. The three essential wings of State, i.e. Legislature, Judiciary and Executives have different functions and there was no occasion to assume any parity amongst them. The status of High Court Judges being constitutional functionaries having different powers, privileges and functions could not be placed at par with Minister for the purpose of conditions of functioning. The Court accordingly dismissed the PIL.

In *Vishwasrao* v. *Union of India*,[15] the PIL before the Bombay high court related to the grievances of about 1497 agriculturists whose lands had been affected by acquisition for widening and laying of the Pune-Solapur National Highway No. 9. The PIL pointed out that for such land acquisition, awards had been passed by the Deputy Collector/Land Acquisition Officer under section 3-G (1) of the National Highways Act of 1894. Since the acquired lands were irrigated agricultural lands having horticulture crops, the agriculturists were dissatisfied with the award of compensation, they filed the applications to the arbitrator to be appointed by the Central Government. Given the pendency of thousands of applications, the Central Government issued a notification appointing more arbitrators. The Collectors and the Additional Collectors of the respective districts were empowered to work as arbitrators under section 3-G (5) of the Act. The petitioners challenged the section 3-G (5) of the Act as being violative of article 14 of the Constitution as the arbitrators would necessarily have a bias. The Court held that the arbitrator appointed by the Central Government under section 3-G (5) of the Act was a person not connected in the various stages of land acquisition and in determination of the compensation which was fixed by the competent authority appointed under section 3 (a) of the Act. The Court opined that it was too broad a challenge to urge that only because the arbitrator being appointed by the Central Government, being an officer of the Government, the theory of bias becomes applicable. The Court accordingly dismissed the PIL, while directing the arbitrators to endeavour to dispose of the pending applications expeditiously.

15 2017 (6) Mh.L.J. 85.

V PIL AND THE RIGHT TO PRIVACY

In *Justice K S Puttaswamy (Retd.)* v. *Union of India*,[16] the nine Judge Bench of the Supreme Court unanimously held that the right to privacy is a Fundamental Right under article 21 of the Constitution. The Court, while overruling its earlier decisions to the extent they held that privacy was not a right guaranteed by the Constitution, held that life and personal liberty were inalienable rights and were recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwelt within. Privacy was held to be a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in article 21 of the Constitution. Elements of privacy also arose in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III. Privacy included at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connoted a right to be left alone. Privacy safeguarded individual autonomy and recognised the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life were intrinsic to privacy. Privacy protected heterogeneity and recognised the plurality and diversity of our culture. The Court observed that it had not embarked upon an exhaustive enumeration or a catalogue of entitlements or interests comprised in the right to privacy. Further, judicial recognition of the existence of a constitutional right of privacy was not an exercise in the nature of amending the Constitution nor was the Court embarking on a constitutional function of that nature which was entrusted to Parliament. The Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law. The meaning of the Constitution could not be frozen on the perspectives present when it was adopted. Technological change had given rise to concerns which were not present seven decades ago and the rapid growth of technology might render obsolescent many notions of the present. Hence the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features.

The Court held further that like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under article 21, privacy was not an absolute right. A law which encroached upon privacy would have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of article 21 an invasion of privacy must be justified on the basis of a law which stipulated a procedure which was fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under article 21. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them. Privacy had both positive

16 (2017) 10 SCC 1.

and negative content. The negative content restrained the State from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposed an obligation on the State to take all necessary measures to protect the privacy of the individual.

The Court held informational privacy as a facet of the right to privacy. The dangers to privacy in an age of information could originate not only from the State but from non-State actors as well. The Court commended to the Union Government the need to examine and put into place a robust regime for data protection. The creation of such a regime required a careful and sensitive balance between individual interests and legitimate concerns of the State. The legitimate aims of the State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits. These were matters of policy to be considered by the Union government while designing a carefully structured regime for the protection of the data.

VI PIL AND RELIGION

In *Indian Young Lawyers Assn.* v. *State of Kerala*,[17] the PIL before the Supreme Court sought a direction to the Government of Kerala, Dewaswom Board of Travancore, Chief Thanthri of Sabarimala Temple and the District Magistrate of Pathanamthitta and their officers to ensure entry of female devotees between the age group of 10 to 50 at the Lord Ayappa Temple at Sabarimala (Kerala) which has been denied to them on the basis of certain custom and usage; to declare Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 framed in exercise of powers conferred by section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 as unconstitutional being violative of articles 14, 15, 25 and 51A(e) of the Constitution and further to pass directions for safety of women pilgrims. That apart, a prayer was also been made for laying guidelines in matters of general inequality related to religious practices in places of worship. The apex court referred the matter to a larger Bench while formulating the following questions for consideration:

1. Whether the exclusionary practice which is based upon a biological factor exclusive to the female gender amounts to "discrimination" and thereby violates the very core of articles 14, 15 and 17 and not protected by morality as used in articles 25 and 26 of the Constitution?

2. Whether the practice of excluding such women constitutes an "essential religious practice" under article 25 and whether a religious institution can assert a claim in that regard under the umbrella of right to manage its own affairs in the matters of religion?

17 (2017) 10 SCC 689.

3. Whether Ayyappa Temple has a denominational character and, if so, is it permissible on the part of a 'religious denomination' managed by a statutory board and financed under article 290-A of the Constitution of India out of Consolidated Fund of Kerala and Tamil Nadu can indulge in such practices violating constitutional principles/ morality embedded in articles 14, 15(3), 39(a) and 51-A(e)?

4. Whether Rule 3 of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules permits 'religious denomination' to ban entry of women between the age of 10 to 50 years? And if so, would it not play foul of articles 14 and 15(3) of the Constitution by restricting entry of women on the ground of sex?

5. Whether Rule 3(b) of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 is ultra vires the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 and, if treated to be intra vires, whether it will be violative of the provisions of Part III of the Constitution?"

In *Basant Kumar Bhagat* v. *State of Chhattisgarh*,[18] the PIL before the Chhattisgarh high court sought a direction requiring the official respondents to ensure that the Sarhul Puja of the Uraon community shall be only in conformity with the calendar fixed by the State Government enlisting holidays for the year. Accordingly, it was pleaded that none had the right to conduct the said Puja on any day other than the date of Sarhul Puja as stated in the calendar published by the State Government, also enlisting the holidays for the State Government offices and employees. The Court held that the fundamental right to freedom of conscience and right freely to profess, practice and propagate religion was guaranteed through article 25(1) of the Constitution of India. And that religious practices or performances of acts in pursuance of religious belief were as much a part of religion as faith or belief in particular doctrines. Such guaranteed fundamental right was made subject to only public order, morality and to other provisions of Part III of the Constitution. Thus, the State could not prescribe any restriction impairing such right otherwise than by enforcing the restrictive covenants contained in clause (1) of article 25 of the Constitution. The Court further held that the provisions in clause (2) of article 25 were also of no avail to empower the State to make any particular law fixing a day or date for conduct of rituals, observances or ceremonies as part of any religion. The executive power was co-extensive with the legislative power. The noting of a particular day in the calendar issued by the Government, as a day of religious importance could not be indicative of any compulsion through law, or even by an executive decision, obliging any person or religion denomination to hold any particular ceremony or ritual on a particular day or only on a particular day. The Court accordingly dismissed the PIL, holding that there was no legal right, either in the petitioner, or to be entertained otherwise through this PIL, to seek any direction or order ensuring that certain religious rituals, ceremonies and practices were performed only on the particular day notified by the State government with reference to religious purposes, while enlisting holidays for a calendar year.

18 2017 (4) CGLJ 76.

VII PIL AND FREEDOM OF SPEECH AND EXPRESSION

In *Ajay Kumar* v. *Union of India,*[19] the PIL before the Aurangabad Bench of the Bombay high court had questioned an objectionable content of the movie, Jolly LLB-2, and had taken exception to certificate issued by Central Board of Film Certification. The Court appointed a Committee to see the film and submit its report. The Committee found a particular scene objectionable which depicted the male protagonist approaching to the dias of a Court and returning from the dias after dialogue with the judge and immediately thereafter the male protagonist "Signaling" to his client as a result of which the client commits further act of throwing the shoe at the judge. Subsequently there was a derogatory dialogue between two lawyers, namely the male protagonist and his colleagues, which indicated that this act was preplanned. The High Court considered the provisions of section 5-B of the Cinematograph Act, 1952, the certificate issued by the Central Board of Film Certification, the report submitted by three Members Committee and the statements made on behalf of the movie maker that the Central Board of Film Certification had granted the permission incorporating the disclaimer that the movie is work of fiction and for the entertainment purpose and that he has highest regards to this Court and legal system. The Court allowed the necessary deletion/modification of scene and the dialogue/conversation, and disposed off the PIL with a direction to the Central Board of Film Certification to re-certify the film.

VIII PIL AND ENVIRONMENT

In *Arjun Gopal* v. *Union of India*,[20] the PIL before the Supreme Court sought the banning of the use of fireworks, sparklers and minor explosives in any form, during festivals or otherwise. The Court considered the PIL from two perspectives: firstly, from preventing air pollution through the bursting of fireworks and secondly, by invoking the provisions of the Explosives Act, 1884 and the Explosives Rules, 2008 framed thereunder for preventing air pollution by restricting the possession and sale of fireworks in the National Capital Region. After recording the previous directions taken in this regard, the Court observed that the steps so far taken by the Government of NCT of Delhi were limited to issuing directions, which was merely paperwork, and that only general directions had been given in the past to schools to sensitize the students and the staff as to the ill-effects and health hazards of bursting fireworks. No specific plan of action had been laid down by the Government of NCT of Delhi to make children aware of the hazards of bursting fireworks and the existing awareness campaigns had been allowed to drift over the last one year. There was no information on the success or failure of these campaigns. The Court, finding the governmental

19 2017 (2) Bom C R 662.

20 (2017) 16 SCC 280.

response to be lethargic with the absence of any keenness to take proactive steps, emphasised that the cost of ill health (particularly among children) was far greater in psycho-social terms than in financial and economic terms. As regards the Delhi Police, the Court found that the police had issued directions that were difficult to enforce such as restricting the time during which fireworks could be burst and that these were ad hoc measures that might be workable (if at all) only for the immediate future.

The Court recorded that there was no response from the States within the NCR giving the impression that air pollution was not a problem for the State Governments despite the ill-effects and health hazards of bursting fireworks. Even the Central Pollution Control Board which was directed on 11th November, 2016 to study and prepare a report within three months on the harmful effects of the materials used in the manufacture of fireworks, had not conducted the study and prepared a report as directed. The Court noted that apart from the fact that the CPCB has not conducted any study; even otherwise, no standards have been laid down by the CPCB which could give any indication of the acceptable and permissible limit of constituent metals or chemicals used in fireworks and released in the air, beyond which their presence would be harmful or dangerous. The Court observed that the 'governmental authorities need to realize their responsibility regarding the care and protection of the health of the people in Delhi and NCR and the importance of launching a sustained campaign to reduce air pollution to manageable limits during Diwali and the period immediately thereafter, that the residents of the NCT of Delhi and indeed the entire NCR were entitled to breathe unpolluted air and that they were entitled to the protection of their health from the adverse consequences of breathing in air polluted by the bursting of fireworks. Reiterating that the right to breathe clean air was a recognized right under the Constitution, the Court issued certain directions in this regard'.

In *Paryavaran Suraksha Samiti* v. *Union of India*,[21] the PIL before the Supreme Court sought a mandamus to the respondents (which included the Union Government, all the State Governments and the Union Territories) to ensure, that no industry which required "consent to operate" from the concerned Pollution Control Board, was permitted to function, unless it had a functional effluent treatment plant, which was capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged. The Court held that the industry requiring "consent to operate" could be permitted to run, only if its primary effluent treatment plant was functional. The Court directed the concerned State Pollution Control Boards to issue notices to all industrial units which required "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational within three months. On the expiry of the notice period of three months, the concerned State Pollution Control Board(s) were mandated to carry out inspections to verify whether or not each industrial unit requiring "consent to operate" had a functional primary effluent treatment plant. Such of the industrial units which had

21 (2017) 5 SCC 326.

not been able to make their primary effluent treatment plant fully operational were to be restrained from any further industrial activity. This direction was to be implemented by requiring the concerned electricity supply and distribution agency to disconnect the electricity connection of the defaulting industry.

The Court further directed the setting up of "common effluent treatment plants" as an urgent mission. The onus to operate the existing common effluent treatment plants was held to rest on municipalities (and/or local bodies). The Court held that it would be open to the concerned municipalities (and/or local bodies) to evolve norms to recover funds for the purpose of generating finances to install and run all the "common effluent treatment plants". The process of evolving the above norms shall be supervised by the concerned State Government (Union Territory) through the Secretaries, Urban Development and Local Bodies respectively, (depending on the location of the respective common effluent treatment plant). The Court also directed that similarly, the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages which discharged industrial pollutants and sewer directly into rivers and water bodies, and that the malady of sewer treatment should also be dealt with simultaneously. The Court directed that 'sewage treatment plants' shall also be set up and made functional within the specified time lines and the format, expressed hereinabove.

The Court put in place an implementation mechanism. The Court required the Member Secretaries of the concerned Pollution Control Boards to issue directions pertaining to continuation of industrial activity only when there was in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the specified time lines. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in the order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal. To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, were required to maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files would be listed periodically. The concerned Pollution Control Board was also directed to initiate such civil or criminal action as may be permissible in law, against all or any of the defaulters. The Court directed each concerned State (and each concerned Union Territory) to make provision for "online, real time, continuous monitoring system" to display emission levels in the public domain on the portal of the concerned State Pollution Control Board. The PIL was accordingly disposed of.

In *M.C. Mehta* v. *Union of India*,[22] the PIL before the Supreme Court dealt with the issue of whether the sale and registration and therefore the commercial interests of manufacturers and dealers of vehicles that did not meet the Bharat Stage-IV (for short 'BS-IV') emission standards as on 1st April, 2017 took primacy over the health hazard due to increased air pollution of millions of country men and women. The applicants had contended that they would not be manufacturing any vehicle that did not comply with the BS-IV emission standards from and after 1st April, 2017 and therefore the only issue was the sale and registration of the existing stock of such vehicles that complied with BS-III emission standards. The applicants sought reasonable time to dispose of the existing stock of such vehicles. The Court found that the manufacturers of such vehicles were fully aware that eventually from 1st April, 2017 they would be required to manufacture only BS-IV compliant vehicles but for reasons that were not clear, they chose to sit back and declined to take sufficient pro-active steps. Accordingly, the Court directed that (a) On and from 1st April, 2017 such vehicles that were not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by any manufacturer or dealer on and from 1st April, 2017 (b) All the vehicle registering authorities under the Motor Vehicles Act, 1988 were prohibited from registering such vehicles on and from 1st April, 2017 that did not meet BS-IV emission standards, except on proof that such a vehicle had already been sold on or before 31st March, 2017.

In *M.C. Mehta* v. *Union of India*,[23] the Supreme Court dealt with the application of a company whose premises had been sealed by the Monitoring Committee of the Supreme Court that had been constituted inter alia to check the unauthorised use of residential premises for industrial and commercial activities. After tracing the various orders passed in the PIL, the Court laid down conditions that it held "would meet the ends of justice and also provide a safeguard against possible misuse of residential premises for commercial (non-industrial) purposes: (1) The applicants will file an affidavit before the Monitoring Committee stating that they will use the premises in question only for residential purposes and for no other purpose whatsoever. The applicants will identify the persons for whose residential use the premises in question are sought to be de-sealed. Any change will be notified to the Monitoring Committee. (2) The affidavit filed by the applicants will state the name, address and other particulars of the person who will be responsible for any misuse of the premises in question, that is, for use of the premises in question for any purpose other than residential. (3) The person identified as the person responsible in terms of condition No.2 above will also file an affidavit clearly stating therein that he or she will ensure that the premises in question are used only for residential purposes and that in the event the premises in

22 (2017) 7 SCC 243.

23 2017 (14) SCALE 460.

question are used for any purpose other than residential, the deponent would be liable for contempt of this Court. (4) The applicants will file with the Monitoring Committee proof of payment of conversion charges to the statutory authority. (5) The affidavits will be filed before the Monitoring Committee who may impose such other further conditions as may be appropriate. In the event the Monitoring Committee is satisfied that the premises in question ought to be de-sealed, it may require the concerned statutory authority to de-seal the premises in question. If the Monitoring Committee is not satisfied that the premises in question ought to be de-sealed, the applicants will be at liberty to approach this Court for appropriate orders".

The Court clarified that henceforth it would not be necessary for any person whose residential premises had been sealed for misuse for any commercial (other than industrial) purposes at the instance of the Monitoring Committee to file an appeal before the appropriate statutory Appellate Tribunal. Instead, that person could directly approach the Monitoring Committee for relief after depositing an amount of Rs.1,00,000/- with the Monitoring Committee which would keep an account of the amounts received by it. Any person who had already filed an appeal before the appropriate statutory Appellate Tribunal but would prefer approaching the Monitoring Committee could withdraw the appeal and approach the Monitoring Committee for relief on the above terms and conditions and on deposit of Rs.1,00,000/- as costs with the Monitoring Committee, provided that the premises were sealed at the instance of the Monitoring Committee. Any challenge to the decision of the Monitoring Committee would lie to the Supreme Court only.

In *Puducherry Environment Protection Association* v. *Union of India,*[24] the PIL before the Madras high court challenged the notification issued by Government of India by which the Union of India had made provision for grant of ex post facto environmental clearance for project proponents, who had commenced, continued or completed project without obtaining clearance under Environment Protection Act, 1986. The Court held that there could be no doubt that the need to comply with the requirement to obtain environmental clearance was non-negotiable. Environmental clearance ensured compliance of environmental laws. A project could be set up or allowed to expand subject to compliance of the requisite norms. The environmental clearance was subject to the satisfaction of the existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect the future generations, it was imperative that pollution laws be strictly enforced.

The Court then considered the question whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment might not otherwise be violating pollution laws or the pollution, if any, could conveniently and effectively be checked. The Court answered the question in the negative. The Court held that the Central Government was well

24 (2017) 8 MLJ 513.

within the scope of its powers under section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior environmental clearance before a project was commenced. Such prior environmental clearance was necessarily granted upon examining the project from the angle of environmental pollution. However, one-time relaxation and that too only in cases where the projects were otherwise in compliance with or could be made to comply with the pollution norms was not impermissible.

The Court, while reiterating that protection of environment and prevention of environmental pollution and degradation are non-negotiable, held that that it could not altogether ignore the economy of the nation and the need to protect the livelihood of hundreds of employees employed in projects which otherwise comply with or could be made to comply with norms. The Court declared that the impugned notification did not compromise with the need to preserve environmental purity, but only allowed those industries and/or projects which might otherwise had been given prior environmental clearance, but omitted to obtain environmental clearance to operate, on the conditions imposed by the authorities concerned, including their liability under the principle "polluter pays".

In *Antonio Fernandes* v. *State of Goa,*[25] the PIL before the Bombay high court inter alia sought a direction to the official respondents to take immediate action for demolition of the illegal structures constructed in the riverine land and to restore the riverine area of river Zuari. The connected PIL was in respect of the permissions granted by the statutory Authority inter alia contending that the CRZ area cannot be used for putting up construction. After examining the powers to grant permission under the relevant CRZ notification and the nature of the activities which can be carried out in the riverine land, the Court found on facts that the impugned permission granted could not be sustained and was liable to be set aside. The private respondent was accordingly directed to approach the Competent Authority to get the permissions in terms of the applicable CRZ regulations within six months, during which period there would be status quo with regard to the existing construction activity. All the other statutory permissions obtained from the Captain of Ports, the Village Panchayat Town Planning Authorities would be subject to the permissions if at all granted by the Competent Authority under the Environment Protection Act.

IX PIL AND CORRUPTION

In *Common Cause : A Registered Society* v. *Union of India*,[26] the PIL before the Supreme Court sought a declaration that Rule 10(1) and Rule 10(4)(i) of the Search Committee (Constitution, Terms and Conditions of Appointment of Members and the Manner of Selection of Panel of Names for Appointment of Chairperson and Members

25 2017 (5) ABR 520.

26 (2017) 7 SCC 158.

of Lokpal) Rules, 2014 framed under the provisions of the Lokpal and Lokayuktas Act, 2013 were *ultra vires* and a further direction to restrain the initiation of any process of selection for appointment of Chairperson and Members of the Lokpal under the provisions of the aforesaid Search Committee Rules.

The Court noted that the aforesaid grievance had been taken care of by the Search Committee Amendment) Rules, 2014 which had deleted the following words in sub-rule (1) of rule 10: "from amongst the list of persons provided by the Central Government in the Department of Personnel and Training". Sub-rule (4) of rule 10 of the Search Committee Rules has also been since deleted. The petitioner urged that notwithstanding the above, the provisions of the Act were yet to be implemented and the Selection Committee/Search Committee under the Act were yet to be constituted so as to further the appointment of the Chairperson and Members of the Lokpal. In fact, the Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014 had been gathering dust from the date of its introduction in the Parliament (18th December, 2014) which would sufficiently demonstrate the lack of executive/legislative will to give effect to a salutary enactment engrafting a vital requirement of democratic functioning of the Government, namely, accountability of the political executive and those in high echelons of public office, to an independent body i.e. Lokpal.

The Court observed that the wisdom of seeking changes in an existing law by means of an amendment lay within the exclusive domain of the legislature and it was not the province of the Court to express any opinion on the exercise of the legislative prerogative in this regard. Indeed, the constitutional doctrine of separation of powers and the demarcation of the respective jurisdiction of the Executive, the Legislature and the Judiciary under the constitutional framework would lead the Court to the conclusion that the exercise of the amendment of the Act, which was presently underway, must be allowed to be completed without any intervention of the Court.

However, the question was "whether the Act, as it exists, sans the amendment proposed, is so unworkable that the Court should refuse enforcement thereof notwithstanding that the Act has come into force by Notification dated 16th January, 2014 issued under section 1(4) of the Act". The Court reiterated the principle that if the Act, as it existed, was otherwise workable and the amendment sought to be introduced by the Legislature was aimed at a more efficient working of some of the provisions of the Act, the wholesome principle that a law duly enacted and enforced must be given effect to will have to prevail and appropriate directions would have to be issued by the Court to the said effect. The Court held that a consideration of the other provisions of the Act in respect of which amendments had been proposed and the views of the Parliamentary Standing Committee in this regard which were available in its report were attempts at streamlining the working of the Act and in no way constituted legal hindrances or bars to the enforcement of the provisions of the Act as it stood today.

Interestingly, the Court noted that India was committed to pursue the policy of Zero Tolerance against corruption. India ratified the United Nations Convention against Corruption by deposit of Instrument of Ratification on the 9th of May, 2011. This Convention imposed a number of obligations, some mandatory, some recommendatory

and some optional on the Member States. The Convention, *inter alia*, envisaged that State Parties ensure measures in the domestic law for criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. As a policy of Zero tolerance against Corruption, the Bill sought to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants, including, Ministers, Members of Parliament, Chief Ministers, Members of Legislative Assemblies, public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which were being set up for the purpose will be constitutional bodies. This setting up of these bodies would further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention.

In *ManoharLal Sharma* v. *Central Bureau of Investigation*,[27] the PIL before the Supreme Court sought a direction to Central Bureau of Investigation to conduct investigation/inquiry against Indian offshore bank account holders, revealed in "Panama Papers", and to file their report before the Court. The PIL further sought the registration of the First Information Report and investigation against Securities and Exchange Board of India (SEBI) Chairman, his associate directors, share brokers and companies. The Supreme Court held that "Public Interest Litigation is a mechanism by which present Court could initiate action for protection of rights of public on account of inaction of any public authority or to oversee any abuse of power by the public authority. At the same time, the PIL weapon is to be used with great caution keeping in mind the fact that governance is the basic function of the Executive. Unless there was a clear abuse of power or failure of governance, the Court may not interfere". The Court found that the Special Investigation Team (SIT) has already been constituted under its orders which comprised two former judges of the apex court. The terms of reference of the SIT covered the subject matter of present petition also which was clear from the notification issued by the Ministry of Finance. The Government had constituted Multi Agency Group to go into the issues arising out of "Panama Papers". The reports of Multi Agency Group (MAG) were being submitted for consideration by the SIT constituted by the apex court. The Supreme Court did not consider it necessary to give any further direction as the concern expressed in the writ petition stood addressed.

X PIL AND CHILDRENS' RIGHTS

In *Exploitation of Children in the State of Tamil Nadu* v. *Union of India,*[28] the PIL before the Supreme Court was taken up on the basis of an article published in the Hindi newspaper "Hindustan" (Lucknow Edition) titled "Orphanage or Places for

27 (2017) 16 SCC 442.

28 AIR 2017 SC 2546.

Child Abuse" that had been forwarded to the Court. The grievance pertained to orphanages in Mahabalipuram in Tamil Nadu (run by NGOs as well as government institutions) which were reportedly involved in systematic sexual, abuse of children. The Court expanded the scope of the PIL to include the rights of children in general to ensure that the provisions for the rights of children as well as provisions for proper facilities to children in education as also health were implemented. The Court observed that there was "a lack of seriousness and more tragically a lack of empathy towards the well-being and welfare of children amongst some of the States and Union Territories and complete apathy with respect to the disturbingly increasing instances of child sexual abuse, often by someone in a position of authority and ineffective implementation of the laws passed by Parliament virtually making parliamentary legislation irrelevant". The Court emphasised that the Juvenile Justice (Care and Protection of Children) Act, 2015 was "a medium for the State to honour the Directive Principles of State Policy particularly under article 39(f) of the Constitution by giving opportunities to children to develop in a healthy manner and in conditions of freedom and dignity". The Court held that it was the constitutional obligation of the State to ensure that for safeguarding and fostering the rights of children, adequate funds are available particularly for children who are in need of care and protection. Referring to the Juvenile Justice Committees set up by the High Courts, the apex court noted that the "High Courts have a constitutional obligation to ensure that the rights of all citizens, including children, as guaranteed under the Constitution are preserved, protected and respected" and that further, "judges are no longer required to remain in an ivory tower. Judges of all the Courts including the Constitutional Courts have non-judicial duties and obligations to perform so that the fundamental rights of the people are respected. It is this realization that led the Constitutional Courts to exercise jurisdiction in social justice issues through Public Interest Litigation and it is this that requires judges of the Courts to ensure access to justice under the Legal Services Authorities Act, 1986 to indigent people and those who cannot afford legal services due to financial or other constraints. It is very much in keeping with this constitutional obligation and goals that the concern and involvement of each Juvenile Justice Committee in the effective implementation of the Act is an absolute necessity. It is equally the obligation of the concerned officials of the State, including the police, to render all assistance to each Juvenile Justice Committee to ensure that the goals envisaged by the JJ Act and the constitutional vision are successfully achieved in the shortest possible time". The Court issued several directions including:

1. The definition of the expression "child in need of care and protection" under section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection.

2. The Union Government and the governments of the States and Union Territories must ensure that the process of registration of all child care institutions is completed positively by 31st December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials.

The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities.

3. The Union Government and the governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31st December, 2017.

4. The governments of the States and Union Territories should draw up plans for full and proper utilization of grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme. Returning the grants as unspent or casual utilization of the grants will not ensure anybody's benefit and is effectively wasteful expenditure.

5. It is imperative that the Union Government and the governments of the States and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection. There are several schemes of the Government of India including skill development, vocational training etc. which must be taken advantage of keeping in mind the need to rehabilitate such children.

6. The governments of the States and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections of child care institutions and to prepare reports of such inspections so that the living conditions of children in these institutions undergo positive changes. These Inspection Committees should be constituted on or before 31st July, 2017 and they should conduct the first inspection of the child care institutions in their jurisdiction and submit a report to the concerned government of the States and Union Territories on or before 31st December, 2017.

7. The preparation of individual child care plans is extremely important and all governments of the States and Union Territories must ensure that there is a child care plan in place for every child in each child care institution. While this process may appear to be long drawn and cumbersome, its necessity cannot be underestimated in any circumstances. The process of preparing individual child care plans is a continuing process and must be initiated immediately and an individual child care plan must be prepared for each child in each child care institutions on or before 31st December, 2017.

8. Wherever the State Commission for Protection of Child Rights has not been established or though established is not fully functional in the absence of a Chairperson or any one or more Members, the governments of the States and Union Territories must ensure that all vacancies are filled up with dedicated persons on or before 31st December, 2017. The SCPCRs so constituted must publish an Annual Report so that everyone is aware of their activities and can contribute individually or collectively for the benefit of children in need of care and protection.

9. The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau

of Police Research and Training, the National Judicial Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest.

10. It is time that the governments of the States and Union Territories consider de-institutionalization as a viable alternative. It is not necessary that every child in need of care and protection must be placed in a child care institutions. Alternatives such as adoption and foster care need to be seriously considered by the concerned authorities.

11. The importance of social audits cannot be over-emphasized. The necessity of having a social audit has been felt in some statutes which have been mentioned above and also by the Comptroller and Auditor General of India. That being the position, it is imperative that the process of conducting a social audit must be taken up in right earnestness by the National Commission for the Protection of Child Rights as well as by each State Commission for the Protection of Child Rights. This is perhaps the best possible method by which transparency and accountability in the management and functioning of child care institutions and other bodies under the JJ Act and Model Rules can be monitored and supervised.

In *Barun Chandra Thakur* v. *Union of India*,[29] the PIL before the Supreme Court pertained to ensuring absolute safety and security of each and every child studying in all schools across the country and to command the authorities of the school managements and promoters to take steps so that the safety and security is maintained. The PIL also sought framing of guidelines and appropriate action against violators. The Court recorded the stand of the Union of India that guidelines had already been framed and two more had been issued and sent to the States for implementation. The Court directed State governments to implement the following guidelines with absolute strictness for safety of school children formulated under (i) Central Government guidelines under Right to Children to Free and Compulsory Education Act, 2009 (ii) National Disaster Management Authority Guidelines, 2016 as amended on 27.2.2017 for safety of school children (iii) Guidelines issued by Central Board of Secondary Education. The Court directed the Union of India and the CBSE to put the guidelines in their respective websites. The Court further required the State Governments to indicate any further directions, if necessary, to ensure that children feel safe and do not suffer from any phobia in schools.

XI PIL AND THE DISABLED

In *Justice Sunanda Bhandare Foundation* v. *Union of India*,[30] the application before the Supreme Court was filed to issue directions to Central Government, State Governments and Union Territories to comply with its earlier judgment pertaining to the implementation of the provisions of the Persons with Disabilities (Equal

29 (2017) 16 SCC 45.

30 2017 (5) SCALE 288.

Opportunities, Protection of Rights and Full Participation) Act, 1995 and for appointment to the visually disabled persons in the faculties and college of various universities in the identified posts. The Court held that under the 1995 Act, the Parliament had shown its concern and provided for reservation for many categories and that the Court by various judgments had directed for implementation of the Act and some States have implemented the provisions to a certain extent. Section 85 of The Rights of Persons with Disabilities Act, 2016 stipulated for appointment special public prosecutor. Thus, emphasis was on the special court, speedy trial and special public prosecutor. The Court further observed that more rights had been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act was noticeably a sea change in the perception and required a march-forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operated in a broad spectrum and the stress was laid to protect the rights and provide punishment for their violation. All the States and the Union Territories were directed to file compliance report keeping in view the provisions of the 2016 Act. The Court emphasized that the States and the Union Territories must realize that under the 2016 Act their responsibilities had grown and they were required to actualize the purpose of the Act, for there was an accent on many a sphere with regard to the rights of the disabled. When the law was so concerned for the disabled persons and made provision, it was the obligation of the law executing authorities to give effect to the same in quite promptitude.

In *Rajive Raturi* v. *Union of India*,[31] the PIL filed before the Supreme Court by a visually disabled person sought proper and adequate access to public places. In particular, the PIL sought provision of all accessibility requirements to meet the needs of visually disabled persons in respect of safe access to roads and transport facilities. The fundamental concern of these visually impaired persons was safe accessibility to movements on footpaths and accessibility to roads and transport. The PIL explained that internationally acceptable mandatory components of physical accessibility was the following: (a) Safety: the environment must be such where disabled people could move around safely (b) Independence: the environment must be such where disabled persons could use the facilities independently (c) Affordability: the barrier free or accessible environment should not come with a premium (d) Logical layout: the environment must be such where disabled persons were able to navigate without too much physical exertion i.e., not having to move to the length and breadth of the building to access information or make use of the facilities The PIL listed out a number of directions that were required to be issued in this regard. The PIL complained that while there were few instances where some of these measures were being implemented, the authorities had moved with a slow pace and in sporadic manner.

31 2017 (14) SCALE 412.

The Court examined the rights of the visually impaired persons in international law and under the constitutional and statutory scheme to hold that there was no denial of the fact that visually impaired persons needed to be provided proper and safe access to roads and transport as well as to buildings, public places etc. The Court disposed of the PIL with detailed directions relating to the making of government buildings fully accessible in a phased time-bound manner and accessibility in airports, railways and government owned public transport carriers. The Court directed comprehensive revision of target deadlines under accessibility of knowledge and ICT Ecosystem, the embedment of disability aspect by the Bureau of Indian Standards in all relevant parts of revised National Building Code and regular updating of the Harmonized Guidelines, and the training of additional sign language interpreters. The Court further directed all States and Union Territories to constitute the Central and State Advisory Boards to effectively implement the statutory provisions within a period of three months.

In *National Federation of the Blind* v. *State of Uttar Pradesh*,[32] the PIL before the Lucknow Bench of the Allahabad High Court sought 3% reservation under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in favour of persons with disabilities distributed equally among persons suffering from blindness and low vision, hearing impaired and locomotor disability to the extent of 1% each is mandatory in all modes of recruitment including promotion for all groups of posts and consequently a direction to the respondents to give such reservation in promotion also to the petitioner and other blind employees in the state and fill up the entire backlog of vacancies filled up by promotion beginning from 1996. The petitioner was a Society registered under Societies Registration Act, 1860 and had been established mainly with the object of the protection of the rights of blind as well as for ensuring better opportunities for their economical rehabilitation as well.

The Court held that the apex court has consistently held that such a PIL was not permissible so far as service matters are concerned. Further, the right of effective access to justice, which had emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the Court must examine the case to ensure that there was in fact, genuine public interest involved. The Court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the Court should make an earnest endeavour to take up those cases, where the subjective purpose of the *lis* justifies the need for it.

The Court further observed that under ordinary circumstances, a third person, having no concern with the case at hand, could not claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances if the

32 2017 (11) ADJ 671.

actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, were unable to approach the Court, and a person, who has no personal agenda, or object, in relation to which he could grind his own axe, approached the Court, then the Court may examine the issue and in exceptional circumstances, even if his *bona-fides* were doubted but the issue raised by him, in the opinion of the Court, required consideration, the Court may proceed *suo-motu* in such respect.

On merits, the Court referred to the case law to hold that the claim of the physically handicapped persons for reservation in promotion was not sustainable. The reliance upon articles 14, 16(1), 38 and 41 was found by the Court to be invalid in as much as the fundamental rights under articles 14 and 16(1) and Directive Principle of State Policy did not give any right to claim reservation in promotions by way of affirmative action to the disabled persons. Moreover, no empirical data had been placed on record to demonstrate, nor did it appear that any study has been carried out by the State regarding the representation of physically handicapped persons in various classes of services in the State. The demand for reservation in promotions, in such event, would not be confined to the physically handicapped persons. It might be taken up by other disadvantaged groups such as women and privileged groups of dependents of freedom fighters claiming rewards of freedom struggle and ex-army personnel seeking rehabilitation, who had been provided horizontal reservation in public services on the posts to be filled up by direct recruitment.

The Court opined that the provisions for reservation in promotions might be provided by the State as a matter of policy subject to limitation as contained in article 14, 16(1) of the Constitution. The Courts did not either make policy or ordinarily interfere with the policy decisions of the State. The Court held that in exercise of power of judicial review, the Courts did not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness. The Courts would not by interpreting the provisions providing for reservations, provide or cull out a policy favoring reservation for physically handicapped persons for promotion in public services. The Court therefore dismissed the PIL as misconceived.

In *Disabled Rights Group* v. *Union of India*,[33] the PIL before the Supreme Court was filed for the benefit of persons suffering from "disability" as per the definition contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which now stood repealed and replaced by the Rights of Persons with Disabilities Act, 2016. The first issue related to the non-implementation of 3% reservation of seats in educational institutions as provided in section 39 of the 1995 Act and section 32 of the 2016 Act. The second issue related to the provision of proper access to orthopaedic disabled persons so that they are able to freely move in the educational institution and access the facilities. The third issue pertained to pedagogy i.e. making adequate provisions and facilities of teaching for disabled

33 2017 (14) SCALE 496.

persons, depending upon the nature of their disability, to enable them to undertake their studies effectively. The original PIL had confined these issues only to law colleges. The Court decided to extend the coverage by encompassing all educational institutions, and proceeded to dispose off the PIL by giving detailed directions relating to the issue of reservation of seats in the educational institutions and the consideration by the UGC of the "Guidelines for Accessibility for Students with Disabilities in Universities/ Colleges" suggested by the petitioner by constituting a Committee in this behalf. The Court directed that the Committee, which could include persons from amongst Central Advisory Board, State Advisory Boards, Chief Commissioner of State Commissioners appointed under the Disabilities Act, shall undertake a detailed study for making provisions in respect of accessibility as well as pedagogy and would also suggest the modalities for implementing those suggestions, their funding and monitoring, etc. The Committee shall also lay down the time limits within which such suggestions could be implemented. The Expert Committee may also consider feasibility of constituting an in-house body in each educational institution (of teachers, staff, students and parents) for taking care of day to day needs of differently abled persons as well as for implementation of the Schemes that would be devised by the Expert Committee. The Report in this behalf, as well as the Action Taken Report, was directed to be submitted to the Court.

XII PIL AND POLICY MATTERS

In *Mamta Sharma* v. *State of Chhattisgarh*,[34] the PIL before the Chhattisgarh high court sought a direction to the respondents for complete prohibition of the sale of liquor in the State of Chhattisgarh and further to take all welfare measures in relation to the health and nutrition of the citizens of the State. The main thrust of the PIL was that in the past few years the sale and consumption of liquor in the State of Chhattisgarh has gone up alarmingly causing innumerable hardships and sufferings to the common people, in particular, the ones who belong to the poor financial background. The other concern of the petitioners was that the rampant sale and consumption of alcoholic drinks was not only imperiling the health of poor people of the State but was also detrimental to their moral and ethical values.

The Court took the view that it was open for the State Government to consider and make policy as enshrined in Part IV of the Constitution, which Part was unenforceable. Should any such policy be made by the State Government and any law has been enacted by the legislature, it would then be for the Court to consider the validity and constitutionality of the same if it was challenged before the Court and if it was urged that same is in violation of any legal or constitutional right of the citizen of India. The Court emphasized that interference with the policy decision and the issuance of a writ of mandamus to frame a policy in a particular manner are absolutely

34 AIR 2017 Chh 85.

different. The Court held that was not within the domain of the Court to legislate by plunging into the policy making process or issuing a direction for making a particular policy in a specific manner. The PIL was accordingly dismissed.

In *Bhartiya Yuva Shakti Kalyanam Samiti* v. *State of Uttar Pradesh*,[35] the PIL before the Lucknow Bench of the Allahabad high court sought that the State should be restrained from permitting sale of liquor and its consumption to the citizens of the State which in effect amounts to a prohibition and consequently, if the State failed to live up to the ideals of article 47 of the Directive Principles of State Policy then the Court should intervene and issue directions in the exercise of extraordinary jurisdiction under article 226 of the Constitution of India. The Court examined the case law to hold that as per the decisions of the apex court vis-a-vis particularly article 47 of the Constitution, the State was under an obligation to review its policy and to take appropriate steps in order to achieve the objective and goals as enshrined under article 47. While the enforcement of article 47 may not be a remedy under article 226 of the Constitution, the State was under an obligation to frame laws in order to achieve the goal of article 47. The Court accordingly disposed of the PIL while requiring the State Government and its authorities to take into account, while framing the excise policy in the coming year, this issue and take a policy decision in the matter keeping in view high ideals and principles that have been spoken of and are referred to by the apex court while interpreting article 47 of the Constitution.

XIII SUO MOTO PIL

In *In re : Article in Mumbai Mirror, Rescue Sham* v. *State of Maharashtra*,[36] the Bombay high court initiated a *suo moto* PIL on the basis of a report in Daily Mumbai Mirror about the inhuman condition of the children's home by the name Satkarm Balgriha at Shahpur, District Thane. All the children living in the said home were mentally challenged. It was reported that recently five children had died due to starvation and malnutrition. The Court, after referring to its previous orders and the statutory and constitutional provisions, including the Juvenile Justice (Care and Protection of Children) Act, 2015, held that proper legislations were in place, but there was a complete failure to implement the same. With a view to ensure the implementation of the existing laws, the Court issued directions inter alia making the interim orders issued from time to time in the PIL as the final directions; requiring State Government to set up adequate number of Homes for Mentally Deficient Children (MDC Homes) in the State and to provide them all the infrastructure and facilities as required by the said Act of 2015 and the Central Rules; requiring the State Government to ensure within one month that a Management Committee under rule 55 of the Central

35 2017 (3) ADJ 595.

36 2017 (4) Bom CR 100.

Rules was constituted for every children's home in the State of Maharashtra and to immediately fill in vacancies caused of the members of all the non- statutory Committees constituted under the order of the High Court on account of death or resignation or otherwise; requiring the State Government to endeavour to exercise the rule making power under sub-section (2) of section 110 of the said Act of 2015 within a period of six months with a view to give complete effect to the said Act of 2015; requiring the State Government to endeavour to create Juvenile Justice Fund in accordance with section 105 of the said Act of 2015 within a period of nine months; requiring the State Government to establish State Child Protection Society and District Protection Units in accordance with section 106 of the said Act of 2015 within a period of nine months; requiring the State Government to grant necessary protection to the children who were either victims of the offences or who were witnesses in terms of the protection granted to the victims and/or witnesses as per the prevailing policy; requiring the constitution of the Child Welfare Committees under section 27 of the said Act of 2015 in all districts, with the State Government ensuring that vacancies to the posts of Chairperson and members are filled in immediately and necessary infrastructure such as a decent office, adequate staff, furniture, computers, printers, etc. was provided to all the Child Welfare Committees and so on so forth.

The Court observed that at present, the State Government was releasing grant to the children's homes a sum of Rs.900/- per normal child per month and Rs.990/- for per mentally challenged child per month in addition to the administration grant of Rs.315/- per head per month. The Court held that the payment of grant at the aforesaid rates was arbitrary and violative of articles 14 and 21 of the Constitution of India and that 'by way of interim measure, till the Government takes a final decision on the issue of substantial increase in the grant', the State Government would pay grant at the rate of Rs.2,000/- per head per month to the MDC Homes and the grant of Rs.1,500/- per head per month to the other children's homes, in addition to the grant of Rs.500/- per head per month towards administration expenses, which was directed to be released with effect from 1st April 2017. The decision, extraordinary in its detail, also interestingly required that the PIL be placed, for reporting compliance, before the same Bench or at least to a Bench to which one of the judges was a party, and that necessary directions in this behalf was directed to be obtained by the Registrar (Judicial-I) from the Chief Justice on the administrative side.

In *Dr. Harish Shetty* v. *Regional Director*,[37] the *suo moto* PIL by the Bombay high court highlighted the need for detection of specific learning disabilities in children at the earliest stage. The Court referred to the provisions of the Rights of Persons with Disabilities Act, 2016 and directed all educational institutions to comply with the mandate given in section 16 thereof. The Court directed the Government authorities to take the specific measures as prescribed under section 17 of the Act to overcome the learning disability problem in children. All schools, boards and educational

37 2017 SCC Online Bom 742, *Suo Motu* PIL No. 2 of 2015.

institutions were directed to carry out the task of detecting specific learning disabilities in children at the early stage, preferably when they are in the primary schools or after they complete the age of nine years.

In *Goa Foundation* v. *Ministry of Environment*,[38] the *suo moto* PIL taken up by the Goa Bench of the Bombay high court was based on press reports that matters before the National Green Tribunal, Western Zone at Pune coming from Goa were to be transferred by a notification of the Ministry of Environment and Forest to the NGT's Principal Bench at New Delhi. It transpired that the Ministry had received a proposal for setting up a circuit bench in Goa in light of the large volume of fillings at the NGT Western Zone bench. The Ministry then received another proposal from the State Government of Goa to transfer all matters, including pending matters, to the Principal Bench in New Delhi. The Ministry acted on this and it did so without any form of public consultation with other 'stake holder', including litigants. The Court considered the site of the Bench from the standpoint of the litigants, and found that such shifting from Pune to Delhi was simply not convenient for the litigants. The Court referred to the case law for the proposition that access to justice was a facet of article 21 of the Constitution. The Court quashed the notification insofar as it transferred the jurisdiction of the NGT, Western Zonal Bench from Pune to New Delhi in regard to Goa. The Court recommended to the State Government and the Ministry to immediately take up with all seriousness the proposal to establish a circuit bench at Goa.

In *Court on its own motion* v. *State of Himachal Pradesh*,[39] the Himachal Pradesh high court took *suo motu* cognizance of the report made by the Registrar (Vigilance) as well as news item published in "The Tribune" dated 26th June 2015 pertaining to failure in the regulation of traffic in and around the town of Manali in District Kullu, Himachal Pradesh. Perturbed by the difficulty which tourists were facing while visiting District Kullu in general and Manali in particular, the Court had directed the State to file a status report indicating what mechanism was in place to check the traffic congestion in Manali and also to come out with a mechanism which ensured that Manali was made accessible and comfortable for the tourists, as otherwise the same would adversely affect not only the tourism in Manali but the entire State of Himachal Pradesh, which would be at the costs of the Tourism Industry of the State of Himachal Pradesh in particular and the people of the State in general. The report inter-alia demonstrated that no work had virtually been commenced by the Contractors concerned for construction of bridges for one reason or other over the river Beas at Bhuntar and Manali, which bridges in fact were washed away almost two decades back. The construction of the said bridges was of utmost importance for the purpose of regulation of traffic, both for Kullu area as well as Manali town so as to check the congestion of traffic. The Court held that besides this, need of the hour was also to implement the

38 2017 SCC Online Bom 4215, PIL Writ Petition No. 22 of 2017.

39 ILR 2017 III HP 102.

long term vision plan which had been forwarded by Superintendent of Police, Kullu to the Deputy Commissioner, Kullu Suggestions such like immediate removal of encroachments from the road side, identification of proper places for the stoppage of buses etc. on the highway, strict enforcement of M.V. Act and Rules by police as well as other agencies, provisions of installing high powered CCTV night vision cameras at places to check violations of traffic rules, division of areas in various sectors to ensure effective performance of police officials/officers and also to fix their responsibilities, proposal of creation of staff to be deployed on the highway from Manali to Rohtang pass, special drive to check idle parking and removal of all abandoned vehicles found on the road side with the help of crane etc. should be implemented by all the stakeholders forthwith. The Court disposed of the PIL with the directions pertaining to time bound construction of bridges over river Beas at Bhuntar and Manali, time bound implementation of the long term vision plan, and the involvement of the stakeholders in the same.

In *Suo Motu* v. *State of Rajasthan*,[40] the PIL before the Jaipur Bench of the Rajasthan high court pertained to the delay in granting prosecution sanction in terms of section 19 of the Prevention of Corruption Act, 1988 in relation to public servants where there was an allegation against them for having committed offences under the various provisions of the Act of 1988. The Court noted that it had issued, while examining the PIL, interregnum directions to the State for keeping a regular vigil in grant of prosecution sanction at the earliest by the various departments. Secretary, Department of Personnel issued general directions to all the head of the departments, Secretaries and Additional Chief Secretaries, Commissioner and other department directing to take decisions on applications pending seeking sanction for prosecution relating to ACB matters. It was also cautioned that if the decisions were not taken the action would be treated as contemptuous and proceedings be initiated against the concerned persons. Another order which was been placed on record was issued by the Chief Secretary of the State of Rajasthan directing all the additional Chief Secretaries to take decisions regarding grant of prosecution sanction.

The Court observed that the purpose of PIL was essentially to put the Government functionaries in action and apprise them of the legal position and their duties which they were required to perform. Having noted the steps taken by the Government, the Court held it was satisfied that the matter could be given a quietus with directions to the State to keep a regular vigil with regard to pending applications relating to sanction under the Act; expeditious conduct of investigation by the ACB and submission of the report of their investigation to the appropriate Court at the earliest.

XIV PIL AND THE COURTS

In *Indira Jaising* v. *Supreme Court of India, through Secretary General,*[41] the PIL before the Supreme Court highlighted that the system of designation of Senior

40 2017 (2) WLN 539 (Raj).

41 AIR 2017 SC 5017.

Advocates in the Supreme Court was flawed and needed to be rectified and acceptable parameters laid down. The PIL sought a declaration that the system of designation of Senior Advocates by the recently introduced method of vote was arbitrary and contrary to the notions of diversity, violating articles 14, 15 and 21 of the Constitution, and was therefore unconstitutional and null and void; and a direction for appointment of a permanent Selection Committee with a secretariat headed by a lay person, which included the Attorney General of India, representatives from the SCBA and the AOR Association and academics, for the designation of Senior Advocates on the basis of an assessment made on a point system suggested in the PIL. The PIL also sought directions directing the Supreme Court (representing the Chief Justice and Judges of the Supreme Court) to appoint a Search Committee to identify the Advocates who conduct PIL cases and Advocates who practice in the area of their Domain Expertise viz., constitutional law, international arbitration, inter-State water disputes, cyber laws etc. and to designate them as Senior Advocates; and to frame guidelines requiring the preparation of an Assessment Report by the Peers Committee on the Advocates who apply for designation based on an index 100 points suggested in the PIL, amongst other reliefs.

The Court, after tracing the origins of what today has come to be recognized as a special class of Advocates namely, Senior Advocates, detailed the prevailing practice in some other jurisdictions as also in the Supreme Court and various High Courts in India. The Court held that the power vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate was not an uncontrolled, unguided, uncanalised power, and issued the following guidelines in this regard:

I. All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as Committee for Designation of Senior Advocates;
II. The Permanent Committee will be headed by the Hon'ble Chief Justice of India and consist of two senior-most Judges of the Supreme Court of India (or High Court(s), as may be); the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;
III. The said Committee shall have a permanent Secretariat the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;
IV. All applications including written proposals by the Hon'ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon'ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the Advocate(s) concerned including his/her participation in pro-bono work; reported judgments in which the concerned Advocate(s) had appeared; the number of such judgments for the

last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;

V. The Secretariat will publish the proposal of designation of a particular Advocate in the official website of the concerned Court inviting the suggestions/views of other stakeholders in the proposed designation;

VI. After the data-base in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

VII. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the concerned Advocate; and make its overall assessment on the basis of a point-based format indicated below:

S. No.	Matter	Points
1	Number of years of practice of the Applicant Advocate from the date of enrolment. [10 points for 10-20 years of practice; 20 points for practice beyond 20 years]	20 points
2.	Judgments (Reported and unreported) which indicate the legal formulations advanced by the concerned Advocate in the course of the proceedings of the case; pro bono work done by the concerned Advocate; domain Expertise of the Applicant Advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.	40 points
3.	Publications by the Applicant Advocate	15 points
4.	Test of Personality & Suitability on the basis of interview/ interaction	25 points

VIII. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.

IX. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.

X. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;

XI. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation the Full Court may review its decision to designate the concerned person and recall the same.

In *Kamini Jaiswal* v. *Union of India,*[42] the PIL before the Supreme Court referred to the FIR relating to criminal conspiracy and of taking illegal gratification to influence the outcome of a pending case before the Court alleging a nexus between the middlemen, Hawala dealers and senior public functionaries, including persons in the judicial field. The FIR had been registered with respect to case of Prasad Education Trust at Lucknow. The medical college set up by the Trust was debarred by the Government from admitting students for the years 2017-18 and 2018-19. The FIR lodged by the CBI named a retired Judge of the High Court as an accused, who had allegedly been negotiating through a middleman to get a favourable order in the petition pending before the Court. The said petition had been heard by a Bench headed by the then Chief Justice of India. The PIL therefore sought that the investigation in relation to aforesaid FIR should be handed over to an SIT headed by a retired Chief Justice of India and not left to the agency controlled by the Government, with the averment that in order to restore the confidence of the public in the judiciary, the agency controlled by the Government should not be allowed to undertake the said investigation. The PIL further stated that propriety demanded that the Chief Justice of India ought not to deal with the present petition either on the judicial side, or even on the administrative side.

The Court referred to the case law for the proposition that the Chief Justice of India was the master of the roster and it was within his competence to constitute a Bench even if the imputation was against him. The Court took the view that that the entire judicial system had been unnecessarily brought into disrepute for no good cause whatsoever. The Court referred to the case law for the proposition that a FIR could not be registered against any sitting Judge of the High Court or of the Supreme Court without the consultation of the Chief Justice of India and, in case there was an allegation against the Chief Justice of India, the decision had to be taken by the President. The Court found the PIL to be misconceived inasmuch it "wrongly presupposes that investigation involves higher judiciary, i.e. this Court's functionaries are under the scanner in the aforesaid case". The Court dismissed the PIL, holding that the PIL had brought the entire system in the last few days to unrest and that serious and unwanted shadow of doubt had been created for no good reason whatsoever.

In *Campaign for Judicial Accountability and Reforms* v. *Union of India*,[43] the PIL before the Supreme Court sought the constitution a Special Investigation Team (SIT) headed by a retired Chief Justice of India to investigate in the matter of alleged conspiracy and payment of bribes for procuring favourable order in a matter pending before the Supreme Court and take consequential actions thereafter along with a direction to the Central Bureau of Investigation (CBI) to hand over all the materials/ evidence collected so far in the FIR bearing No. RC10(A)/2017-AC.III, New Delhi to the SIT to be constituted by the Court. The Court referred to its earlier decision in

42 AIR 2017 SC 5334.

43 2017 (13) SCALE 381.

W.P. (Crl.) No. 176 of 2017 titled *Kamini Jaiswal* v. *Union of India* and held that the Court had considered and dealt with similar plea raised in this PIL. The Court held that the "petition is not only wholly frivolous, but contemptuous, unwarranted, aims at scandalizing the highest judicial system of the country, without any reasonable basis and filed in an irresponsible manner, that too by a body of persons professing to espouse the cause of accountability". The Court dismissed the PIL with cost of Rs. twenty five lakhs to be deposited by the petitioner before the Registry of the Court within six weeks where after the said amount was to be transferred to Supreme Court Bar Association Advocates' Welfare Fund.

In *Centre for PIL* v. *Housing & Urban Development Corpn. Ltd.*,[44] the PIL before the Supreme Court pertained to the huge pendency and lack of infrastructure, facilities and man power in the Debt Recovery Tribunals. The Court traced the circumstances leading to the establishment of Debt Recovery Tribunals under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 that provided for the establishment of tribunals and appellate tribunals for expeditious adjudication and recovery of dues due to banks and financial institutions. The Court noted that the tribunals were also vested with the jurisdiction to entertain securitization applications under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Though the Act of 1993 provided for the disposal of recovery applications within one hundred and eighty days, cases had remained pending for years together. In order to deal with the large pendency of cases, the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Bill, 2016 was introduced in the Lok Sabha on 11 May 2016. Eventually, a law had been enacted by both the Houses of Parliament and published in the E-gazette on 16 August 2016. The Court observed that the legislative changes to provide for expeditious disposal of proceedings before the Debt Recovery Tribunals might not by themselves achieve the intended object so long as the infrastructure provided to the Tribunals was not commensurate with the burden of the work and nature of judicial duties. The Court noted that the Debt Recovery Tribunals and Appellate Tribunals suffered from a lack of adequate infrastructure, manpower and resources. Having due regard to the important adjudicatory function which was entrusted to these Tribunals, the efficacy of parliamentary legislation would depend in a large measure on the efficiency with which the Tribunals discharge their duties. The Court directed the Union Government to file an affidavit specifically dealing with the following issues:

(i) Whether the timelines set down in the amended legislation are capable of being achieved with the existing infrastructure including judicial personnel and staffing pattern of the Debt Recovery Tribunals and Debt Recovery Appellate Tribunals;

(ii) The underlying basis, if any, upon which the revised timelines have been stipulated and whether any scientific study has been conducted on the availability of infrastructure;

44 (2017) 3 SCC 605.

(iii) Whether, and if so, what steps the Union government intends to adopt to enhance the infrastructure of Debt Recovery Tribunals and the Appellate Tribunals in terms of physical infrastructure, judicial manpower and non-judicial personnel required for the efficacious functioning of the Tribunals;

(iv) The specific plan of action including time-schedules within which the existing infrastructure would be upgraded so as to achieve the time frame for disposal indicated in the amended legislation; and

(v) Empirical data on the pendency of cases for more than ten years and the list of corporate entities where the amount outstanding is in excess of Rs.500 crore.

In *Sarasani Satyam Reddy* v. *Union of India*,[45] the petitioner, a designated Senior Advocate, filed the PIL before the Hyderabad High Court for the States of Telangana and the Andhra Pradesh complaining about the inaction on the part of the different stakeholders in (1) not appointing a regular Chief Justice for the past about 22 months; (2) not filling up of the vacancies to the sanctioned strength; (3) not maintaining the ratio of 2:1 for elevation from the Bar and the service; (4) not appointing any Member of the Bar of the State of Telangana for the past 4 years and (5) consequently not fulfilling the obligations imposed under various articles of the Constitution.

The Court held that the grievances of the petitioner were not capable of being remedied by the wave of a magic wand. The appointment of Judges, which was to take place through a "participative consultative process" involving four partners namely (i) the collegium of the high court (ii) the State (iii) the collegium of the Supreme Court and (iv) the Union of India, in view of its special angularities, is prone to be time consuming. Two out of these four partners belonged to the same family and the head of that family had gone on record, not on the administrative side, but on the judicial side, that a rigorous process was in progress. The High Court held that it was therefore, bound to give credence to what was recorded in the judicial order by the Supreme Court, not on account of any diffidence, servility or subordination and certainly not on the ground of lack of jurisdiction or maintainability, but on account of the judicial discipline and faith that a member of the same family/fraternity should repose in the other members, especially the head of the same system/family. The Court reasoned that it must repose faith and trust in what is recorded in an order of the highest court of the land. The Court reasoned that should it entertain the writ petition and issue notice to the respondents, it did think that any of them would come and file a counter contending that the reliefs prayed for were not to be granted. The respondents may simply place an assurance to complete the process in a time frame. This assurance was already found in the order of the Supreme Court and hence there is no necessity to entertain the PIL.

In *Abhishek Shukla* v. *High Court of Judicature, Allahabad*,[46] the PIL by a lawyer before the Allahabad high court sought a direction commanding the official respondents

45 2017 (3) ALT 468.

46 2017 6 AWC 6161 All.

to immediately remove the encroachment made on a plot of land allotted to the High Court and Advocate General's office in Civil Station, Allahabad. The allegation of encroachment was initially made against an unknown person, who subsequently was identified as the respondent Waqf which had recently constructed a Masjid on the portion of the plot known as "Masjid High Court". The High Court disagreed with the contention of the respondent Waqf that the PIL was not maintainable 'in the matter of religious institutions', taking the view that the PIL did not pertain to the internal matters of the religion but to the unauthorised possession by the respondent Waqf as well as the unauthorised structures existing over the site in dispute. Interestingly, the members of the Managing Committee of respondent Waqf were all eminent lawyers practicing in the High Court. The Court, after also referring to the acute space crunch at the High Court, allowed the PIL while directing the respondent Waqf to handover vacant and peaceful possession of the site in dispute to High Court within a period of three months, except for a smaller portion that was to be handed over within two weeks, and to remove all structures standing thereon; failing which forcible possession of the entire site in dispute was to be taken from respondent Waqf. The Court directed the members of the Committee of Management of the respondent Waqf, "most of whom are the lawyers practicing in this Court, to obey/abide by this order". The application by the respondent Waqf for allotment of an alternative site, if made to the State/District Administration, was directed to be dealt with "sympathetically" in accordance with law, within eight weeks from the date of the application. The Registrar General of the High Court was directed to ensure that in future no part of the High Court premises, either at Allahabad or at Lucknow, was permitted to be used for practicing religion or offering prayers or to worship or to carry on any religious activity by any group of persons.

In *State of Jammu & Kashmir* v. *Distt. Bar Assn., Bandipora*,[47] the appeal before the Supreme Court by the State of Jammu and Kashmir challenged two orders of the Division Bench of the High Court in a PIL instituted by the District Bar Association, Bandipora. The grievance of the Bar Association in the PIL was that since the creation of the district of Bandipora in 2007, the Sessions Court had been housed in a building which used to be a part of the Munsifs Court Complex. The Principal District and Sessions Judge, Chief Judicial Magistrate and Munsif discharged their judicial functions in a building which lacked basic amenities. During the course of the hearing of the PIL seeking the construction of a district court complex in Bandipora District, the High Court observed that over a considerable period of time the State government has not created the required number of posts for the state judiciary as a result of which work had been hampered. According to the High Court, appointment of daily rated workers was necessitated to ensure that judicial work did not suffer. The High Court opined that these workers had been rendering work which should have been assigned to persons appointed on a regular basis against sanctioned posts. The High

47 (2017) 3 SCC 410.

Court proceeded to issue directions for the regularization of services of daily rated workers. These directions were totally unconnected to the reliefs which were sought in the PIL. The Supreme Court found it unfortunate that the State government had allowed the requirements of the state judiciary to be neglected over such a long period of time. The Court observed that the need to facilitate the proper functioning of the High Court and the district judiciary was a constitutional necessity which imposed a non-negotiable obligation on the State government to create an adequate number of posts and to provide sufficient infrastructure. The Court however held that the direction for regularization was issued by the High Court without considering the relevant constitutional and legal principles and that the issue of whether such appointments were irregular or whether they were illegal should have been determined but had not been considered. The apex court set aside the orders directing regularization enmasse, and restored the proceedings back to the file of the High Court for reconsideration of the matter afresh having due regard to the constitutional and legal principles enunciated and having regard to all relevant factual aspects.

XV PIL AND ARBITRARY STATE ACTION AND STATE INACTION

In *Environment and Consumer Protection Foundation* v. *Union of India*,[48] the PIL before the Supreme Court pertained to the pitiable plight of widows in Vrindavan and other ashrams in the country - begging in temples and then huddling together in hovels. The PIL sought steps to rehabilitate the widows. The Court passed several directions including the setting up of a Special Committee for such purpose and took on record its suggestions. The Court requested the Committee to consider the need to encourage widow remarriage as that might enable our society to give up the stereotype view of widows. The National Commission for Women, in public interest, to assist in providing some working space to the Committee. The Court emphasised the importance of Action Plans and the power of PIL. The Court held that the advantage of PIL was not only to empower the economically weaker sections of society but also to empower those suffering from social disabilities that might not necessarily of their making. The widows of Vrindavan (and indeed in other ashrams) quite clearly fell in this category of a socially disadvantaged class of society. There could be little or no doubt at all that widows in some parts of the country were socially deprived and to an extent ostracized. The Court held that it was to give voice these hapless widows that it became necessary for it to intervene as a part of its constitutional duty and for reasons of social justice to issue appropriate directions.

In *Swaraj Abhiyan (V)* v. *Union of India*,[49] the PIL before the Supreme Court sought the implementation of the National Food Security Act, 2013. The Court set out its previous orders and directions and referred to the case law, while observing

48 (2017) 16 SCC 780.

49 AIR 2017 SC 3516.

that the NFS Act, a social justice and social welfare legislation, was not being implemented as it should be. The Court proceeded to issue detailed directions for the effective implementation of the said Act. The Court required the Secretary in the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India to convene meetings of the concerned Secretaries of all the State Governments and Union Territories to take stock of the implementation of the NFS Act and brainstorm over finding ways and means to effectively implement the provisions of the NFS Act in letter and spirit. The said Secretary was required to emphatically request and commend to every State Government and Union Territory to notify appropriate rules for a Grievance Redressal Mechanism under the provisions of the NFS Act and to designate appropriate and independent officials as the District Grievance Redressal Officer within a fixed time frame and in any case within the year. Adequate publicity should be given to the appointment and designation of District Grievance Redressal Officers so that any aggrieved person could approach them without any fear and with the expectation that the grievance would be redressed. The Court further directed the said Secretary to emphatically request and commend to the State Governments and Union Territories to constitute, establish and make fully functional a State Food Commission under the provisions of the NFS Act before the end of the year, and to require the Chief Secretary to ensure that adequate arrangements are made by each State Government and Union Territory to provide adequate infrastructure, staff and other facilities for the meaningful functioning of the State Food Commission including preparation of annual reports required to be laid before the State Legislature. The said Secretary was directed to emphatically commend and request every State Government and Union Territory to constitute and establish a functioning Vigilance Committee in terms of section 29 of the NFS Act before the end of the year for the purposes of carrying out the duties and responsibilities mentioned in that section. The said Secretary was directed to ensure that the social audit machinery postulated by section 28 of the NFS Act and which was already in place in so far as the MGNREGA Act was concerned was established at the earliest with appropriate modifications to enable every State Government and Union Territory so that a periodic social audit was conducted and the NFS Act was purposefully implemented for the benefit of the people.

In *Narmada Bachao Andolan* v. *Union of India,*[50] the PIL before the Supreme Court pertained to an equitable settlement for the rehabilitation of the 'project affected families', consequent upon the implementation of the Sardar Sarovar Project. The Court examined the rehabilitation packages offered to 4998 'project affected families' in the State of Madhya Pradesh. Out of these 'project affected families', 4774 families opted for the 'Special Rehabilitation Package', namely, they would accept cash payment as compensation, and would purchase land out of the said payment. The afore stated payment was to be made in two instalments. The first instalment would be spent as earnest money, and the second instalment would constitute the final payment for executing the sale deed.

50 2017 (3) SCALE 268.

Out of the 4774 families, who had opted for the 'Special Rehabilitation Package', 4264 families are stated to have accepted, both instalments. 386 families were extended the first instalment only, and could not be favoured with the second instalment. They were disputants before the Court. In addition to these disputants, there were 120 families, who did not accept any money whatsoever, and another 4 families which were in litigation with reference to the compensation payable. The Court also found that 1358 families who had received compensation could not in fact find alternative land as they had been duped by middlemen and needed further compensation. The Court awarded compensation to the various categories of the families as full and final settlement. The Court permitted the affected families to raise the issue of the amenities that needed to have been extended to the concerned families in terms of the Narmada Water Disputes Tribunal Award before concerned Grievance Redressal Authority within one month. In case such a representation was made, and accepted by the concerned Grievance Redressal Authority, the concerned State Government shall implement the recommendation, as expeditiously as possible, without raising any unnecessary objection. In case, any of the "project affected families" was not satisfied with the recommendations made by the Grievance Redressal Authority (on the representation, or alternatively, if no decision was taken thereon, within three months of registration of such representation), it shall be open to such family to pursue its cause before a Court of competent jurisdiction in consonance with law. The Court disposed off the matter, while specifying the time lines for release of compensation and vacation of all occupants including all the 'project affected families' of the submergence area under reference.

In *Dr. S. Rajaseekaran (II)* v. *Union of India*,[51] the PIL before the Supreme Court inter alia sought the enforcement of road safety norms and appropriate treatment of accident victims. The PIL estimated that 90% of the problem of deaths due to road accidents was the result of a lack of strict enforcement of safety rules on roads and strict punishment for those who do not obey rules. The Court traced the orders that had already been passed in the PIL and issued detailed directions relating to the Road Safety Policy, the constitution of the State Road Safety Council in terms of section 215 of the Motor Vehicles Act, 1988, the constitution of the Lead Agency which would act as the Secretariat of the State Road Safety Council and coordinate all activities such as licensing issues, Road Safety Action Plan to reduce the number of road accidents, as well as the fatality rate; the setting up of a District Road Safety Committee in terms of section 215(3) of the Motor Vehicles Act; publication of a protocol for identification and rectification of black spots and take necessary steps for improving the design of roads to make them safe; adoption of Traffic Calming Measures, carrying on of Road Safety Audits in order to reduce the possibility of road accidents through corrective measures, engineering design of new roads, constitution of a Working Group on Engineering, Drivers' Training, implementation of Lane

51 2017 (13) SCALE 729.

Driving, acquisition of Road Safety Equipment like cameras and surveillance equipments in detecting traffic and identifying violators, implantation of directions relating to Alcohol and Road Safety, uploading of the Unique Identification Number of the speed governors in the VAHAN database, setting up of at least one Trauma Care Centre in every district with necessary facilities and an ambulance, an Universal Accident Helpline Number, the establishment of Permanent Road Safety Cells, the fitment of vehicle location tracking devices in all public service vehicles subject to some exceptions, Bus/Truck–Body Building Code, fitment of ABS, Air Bags and Headlights and crash test for all light motor vehicles by the testing agency notified under rule 126 of the Central Motor Vehicles Rules, 1989.

In *Re - Inhuman Conditions In 1382 Prisons*,[52] the PIL before the Supreme Court was based on the letter written to the Court by a former Chief Justice of India highlighting the inhuman conditions in prison. The Court identified that four issues involved were (ii) Overcrowding in prisons; (ii) Unnatural death of prisoners; (iii) Gross inadequacy of staff, and (iv) Available staff being untrained or inadequately trained. The Court, after tracing its previous orders and referring to the case law, requested the Chief Justices of the High Courts to register a *suo motu* PIL with a view to identifying the next of kin of the prisoners who had admittedly died an unnatural death as revealed by the National Crimes Record Bureau during the period between 2012 and 2015 and even thereafter, and award suitable compensation, unless adequate compensation had already been awarded. The Court directed the Union of India through the Ministry of Home Affairs to ensure circulation to the Director General or Inspector General of Police (as the case may be) in charge of prisons in every State and Union Territory of (i) the Model Prison Manual, (ii) the monograph prepared by the NHRC entitled "Suicide in Prison - prevention strategy and implication from human rights and legal points of view", (iii) the communications sent by the NHRC referred to in the judgement (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson Mandela Rules and (vi) the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross. The Court directed that all efforts should be made, as suggested by the NHRC and others, to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prisons – both natural and unnatural. The Court required the Union of India through the Ministry of Home Affairs to direct the NCRB to explain and clarify the distinction between unnatural and natural deaths in prisons as indicated on the website of the NCRB and in its Annual Reports and also explain the sub-categorization 'others' within the category of unnatural deaths. The State Governments were directed, in conjunction with the State Legal Services Authority (SLSA), the National and State Police Academy and the Bureau of Police Research and Development, to conduct training and sensitization programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners. The Court directed the State Governments to appoint

52 2017(10) SCC 658.

counsellors and support persons for counselling prisoners, particularly first-time offenders. The Court observed that while visits to prison by the family of a prisoner should be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also exploring the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise. The Court directed that the State Legal Services Authorities (SLSAs) should urgently conduct a study on the lines conducted by the Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan in respect of the overall conditions in prisons in the State and the facilities available. The study should also include a performance audit of the prisons, as has been done by the CAG. The SLSAs should also assess the effect and impact of various schemes framed by NALSA relating to prisoners. The State Governments were further directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary, and to constitute an appropriate Board of Visitors in terms of Chapter XXIX of the Model Prison Manual indicating their duties and responsibilities. The Court found the suggestion of encouraging the establishment of 'open jails' or 'open prisons' as worth considering. The Ministry of Women & Child Development of the Government of India, which was concerned with the implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 was directed to discuss with the concerned officers of the State Governments and formulate procedures for tabulating the number of children (if any) who suffered an unnatural death in child care institutions where they were kept in custody either because they were in conflict with law or because they needed care and protection.

In *Extra Judl. Exec. Victim Families Assn.* v. *Union of India*,[53] the grievance in the PIL before the Supreme Court was that 1528 persons had been killed in fake encounters by police personnel and personnel in uniform of the armed forces of the Union. The Court referred to its earlier orders, the information on record about the fake encounters, the pendency of cases in other Courts and the instances were compensation had been awarded. The Court directed registration of FIR in certain cases, overruling the objection that some of the incidents were of considerable vintage and at this point of time it might not be appropriate to re-open the issues for investigation. The Court held that if a crime had been committed, a crime which involved the death of a person who was possibly innocent, it could not be over-looked only because of a lapse of time. It was the obligation of the State to have *suo motu* conducted a thorough inquiry at the appropriate time and soon after each incident took place. Merely because the State had not taken any action and allowed time to go by, it could not take advantage of the delay to scuttle an inquiry.

53 (2017) 8 SCC 417.

The Court held that access to justice was certainly a human right and it had been given a special place in our constitutional scheme where free legal aid and advice was provided to a large number of people in the country. The primary reason was that for many of the deprived sections of society, access to justice is only a dream. PIL had evolved to provide access to justice to every citizen and to make it meaningful. The history of PIL over the years has settled that the deprived sections of society and the downtrodden such as bonded labourers, trafficked women, homeless persons, victims of natural disasters and others could knock on the doors of the constitutional courts and pray for justice. This is precisely what had happened in the present PILs where the next of kin could not access justice even in the local courts and the petitioners took up their cause in public interest. The Court held that our constitutional jurisprudence did not permit it to shut the door on such persons and it was its constitutional obligation to give justice and succour to the next of kin of the deceased.

The Court further directed the Central Bureau of Investigation to look into the fake encounters or use of excessive or retaliatory force, lodge necessary FIRs and to complete the investigations into the same and prepare charge sheets, wherever necessary. The Court also examined the powers of the NHRC and expressed its concern that such a high powered body has been most unfortunately reduced to a toothless tiger. The Court opined that any request made by the NHRC must be expeditiously and favourably respected and considered by the Union of India otherwise it would become impossible for the NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights in our country. The Court directed the Union of India to take note of the concerns of the NHRC and remedy them at the earliest and with a positive outlook. The Court stated that it expected all State Governments to abide by the directions issued by the NHRC in regard to compensation and other issues as may arise from time to time.

In *Janhit Manch* v. *State of Maharashtra,*[54] the PIL before the Bombay high court had questioned the action of the respondent State granting concessions in respect of development of various buildings which consequently enabled the developers to amass additional areas under various heads, such as refuge areas, passages, flower beds, decks etc., free of Floor Space Index (FSI). The High Court had held that the refuge areas granted to Respondent with respect to the said building was in utter excess of norms. The Municipal Commissioner was directed to re-examine the issue of excess refuge area and to re-issue the FSI. The petitioners filed the Special Leave Petition challenging the judgment of the High Court. Meanwhile, the private respondent had proceeded to construct building. After judgment of the High Court, the respondent approached the Municipal Commissioner. The Municipal Commissioner in his order observed that (i) refuge areas would be provided free of FSI only to the extent of 4 per cent of the built up area it served in the said building, (ii) those areas in excess of requirements would be counted in FSI in accordance with National Building Code.

54 2017 (7) SCJ 27.

The respondent, aggrieved by the order, filed a petition before the High Court. Meanwhile, Stop Work Notice was issued by Municipal Corporation to the respondent to desist from continuing with construction of public parking lot. The said Stop Work Notice was challenged by the respondent in City Civil Court, which set it aside. The order of Civil Court, whereby Stop Work Notice was set aside, was also challenged by Municipal Corporation of Greater Bombay in the High Court by filing a first appeal. The Municipal Commissioner was directed to hear the respondent and to decide what should be the reasonable refuge area in the said building. The order was confirmed in parts. Both sides had filed SLPs in the Supreme Court. The petitioners now filed the transfer petition in the Supreme Court to transfer the petitions from the High Court to the Supreme Court. The Supreme Court allowed the transfer petition holding that the issues which had been raised in the SLPs filed by the parties had bearing on the PIL and it was in the interest of all the parties that such issues be decided finally.

In *Uday Shetty* v. *Union of India*,[55] the PIL before the Bombay high court pertained to keeping the rail tracks free from objects that could lead to train accidents as also reducing access to the tracks by people in order to reduce the number of deaths that had taken place due to crossing of tracks. The Court directed the railway authorities to increase the number of gang-men to patrol the tracks and to construct a boundary wall along the side of the railway tracks so that access to the railway tracks can be minimized. The Court directed the railway authorities to consider how to reduce the overcrowding of trains so that people don't fall from the train. The Court observed that fatal accidents could be prevented if the root cause itself was removed by making people aware about the risk taken by them in crossing the railway tracks. This could be either by advertisements or showing documentaries on television and other media, and also creating awareness in schools, colleges and offices. Such effort should be done not only by the railway authorities but also by the State Government, Central Government and the Municipal Corporations since most of their employees travel by train. Other NGOs could also take part in creating awareness among the people who travel everyday by the railway local trains. The Court directed the setting up of Emergency Medical Room's (EMRs). The railway authorities were further directed to consider whether it was possible to construct the sub-ways below the railway stations, so that commuters could quickly go from one platform to other platform without crossing the railway tracks.

In *Abdul Samad* v. *State of Maharashtra*,[56] the grievance in the PIL before the Bombay high court was that the original slum dwellers, who had been allotted tenements free of cost, had illegally transferred the tenements contrary to the law and had indulged in profiteering. Had the authorities been prompt, such illegal occupants could be evicted so that tenements become available to the concerned authorities as well as to the State Government to accommodate the project affected persons. The

55 2017 SCC Online Bom 1801, PIL No. 78 of 2009.

56 2017 SCC Online Bom 6085, PIL No. 143 of 2009.

Court found that all the concerned authorities had been very slow in taking action against the persons in unauthorized possession of the premises allotted free of cost to the allottees under the Slum Rehabilitation Schemes. The Court required the Principal Secretary of the Housing Department of the Government of Maharashtra to list the steps that the State proposed to take.

In *Vivekanand Dayanand Gupta* v. *Municipal Corporation of Greater Mumbai*,[57] the PIL before the Bombay high court highlighted the situation that huge amounts were spent for repairing roads and nalas but work was not undertaken in a proper manner. Consequently, every year flooding took place in various parts of the city and the huge amount, which had been spent for carrying out repairs, went down in drain. The Court noted from the reports submitted by the Assistant Police Commissioner, Special Investigation Cell and the Senior Inspector of Police, Economic Offences Wing that the Corporation had filed the complaint against their erring officers following which FIR had been registered and 24 persons had been arrested. Further investigation was stated to be going on. The Court directed that the investigation be expedited and regularly submit the report about the progress made. The Court further directed the State Government to inform the Court whether the Government provided any funds to the Corporation and if such funds were disbursed, whether the Government monitored the spending of the funds and obtained audit of the accounts from the Corporation, and whether the Government monitored the activities of the Corporation.

In *Genba Laxman Pawagi* v. *State of Maharashtra,*[58] the PIL before the Bombay high court sought a direction to the State Authorities to complete construction of Right Bank Canal, so that irrigation facility was made available to lands of Petitioners. The grievance of the petitioners was that there was callous inaction, lethargy and apathy on part of State authorities in completion of project, and that the assurances to the petitioners that the construction upon Right Bank Canal would recommence were only on paper. The Court held on facts that the State authorities were both, statutorily as well as constitutionally obliged to provide to the petitioners' land the benefit of irrigation from the Nira Deoghar Project or at least, to make available to the lands allotted to the petitioners some reasonable amount of water supply and irrigation facility, so as to render such lands fit for agriculture. The Court observed that the need to comply with such obligation was even greater since, the petitioners, on account of the acquisition of their ancestral lands and houses from the affected zone had been virtually rendered destitute. This was not a case of simple acquisition of land and houses but rather, a case of acquisition of the very livelihood of the petitioners. The Court held that taking into consideration the established violation by the State authorities of the petitioners' fundamental rights guaranteed by article 21 of the Constitution, not to mention the gross dereliction on the part of the State authorities in complying with their statutory and constitutional obligations to the petitioners, it

57 2017 SCC Online Bom 4215, PIL No. 12 of 2016.

58 2017 (2) Bom C R 734.

was of the opinion that this was a fit case to award compensation to the petitioners. The Court reiterated its earlier order determining the quantum of compensation to be Rs.15,000/- per month to each of the petitioners effective from 1 December 2012 until the State authorities made available to the petitioners and the lands allotted to them some reasonable water supply and irrigation facility.

In *Ajitha K.* v. *Guruvayur Devaswom Managing Committee,*[59] the PIL before the Kerala high court pertained to the regularization of service of the temporary employees by the Guruvayoor Devaswom Managing Committee, ostensibly to comply with the judgment of the Supreme Court in *Umadevi*.[60] The Guruvayoor Devaswom made appointments to various posts by engaging temporary hands, without proper publicity or following the procedures. Thereafter the Guruvayoor Devaswom regularized the service of some temporary employees, overlooking the claim of the temporary employees who have put in more than 10 years of service. The Division Bench considered the manner in which the Guruvayoor Devaswom made appointments and found large scale irregularities in the appointments. The Court upheld the locus standi of the petitioners to maintain the PIL holding that when the very process of recruitment was contrary to the relevant provisions of law and precedents, the same could not be branded as a simple 'service matter' and the party who attempted to set the law in motion could not be non-suited on the ground that he did not have any 'locus standi' by relying on the principle that no PIL could be entertained in service matters.

On merits, the Court deprecated the attempt of the Devaswom to regularize the service of the temporary employees, who came to be appointed without much publicity and without giving chance to all the interested/eligible parties to participate in the process of selection, under the cover/guise of extension of benefit flowing from the apex court's Judgment in *Umadevi*. The High Court directed the Devaswom to identify the vacancies to be filled up on a permanent basis and to fill all the vacancies on a regular basis in accordance with the relevant Rules, by reporting the same to the Devaswom Recruitment Board, which has already been brought into existence.

In *In Re Withdrawal of Criminal Cases by State Government*,[61] the Allahabad high court the High Court made the following reference in the background of the criminal case being sought to be withdrawn by the government against an accused having political access despite the Assistant Public Prosecutor and higher officers giving an opinion stating that police after due investigation had submitted charge-sheet based on evidence, that the charges were serious and there were good chances of conviction of accused:

1. Whether the power of withdrawal can be exercised by State Government under section 321 of Code of Criminal Procedure in a whimsical or arbitrary manner or it is required to be exercised for the considerations, just, valid and judicially tenable?

59 ILR 2017 (4) Kerala 276.

60 (2006) 4 SCC 1.

61 2017 (3) ADJ 194.

2. Whether decision taken by State Government for withdrawal of cases communicated to Public Prosecutor with direction to proceed ahead is open to judicial review or not in a writ jurisdiction under article 226 of the Constitution of India?

3. Whether State Government should not be required to make scrutiny of various criminal cases pending in Subordinate Courts to find out if they deserve withdrawal in exercise of powers under section 321 Cr.P.C. irrespective of fact that accused or anyone else has approached the government for this purpose or not?

The Court held that any criminal offence was one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. Criminal Justice was dependent on the agencies of government charged with enforcing law, adjudicating crime, and correcting criminal conduct. Criminal justice system mandated fair and proper investigation with an avowed object to bring out all material before the Court of competent jurisdiction to enable it to find out the truth. Unsolved crimes, unsuccessful prosecution, unpunished offenders and wrongful convictions brought the criminal justice system in disrepute thereby creating an impression in the mind of common people that they could get away with any crime, which tarnished not only the image of the investigation agency but of judicial system as well. The Court referred to the case law to hold that under the scheme of things provided for, the Public Prosecutor/Assistant Public Prosecutor could proceed to move an application for withdrawal of criminal case for which he had to take consent of the State government. When the Public Prosecutor/Assistant Public Prosecutor, proceeded to move an application, he had to act objectively being an Officer of the Court and had to see and ensure that the move that was being mooted by him is in the interest of advancing cause of justice. The Public Prosecutor would have to rise to the occasion and would have to act independently, courageously and not simply surrender his discretion. The authority conferred on Public Prosecutor to take independent decision was not negotiable and could not be bartered away in favour of those who may be above him on the administrative side as the Public Prosecutor was obligated to be guided by law and spirit of Code of Criminal Procedure only and ensure that his opinion was not used otherwise. A duty had also been fastened on Court to check the abuse or misuse by the executive of the provisions of section 321 of the Criminal Procedure Code. The Court was thus obligated to record a finding that the application moved by the Public Prosecutor was in the interest of justice and there was no abuse or misuse of the authority of Public Prosecutor or the Government. When a Court proceeded to allow an application for withdrawal its order must record a finding that the application had been moved in good faith to secure the interest of justice and not for advancing/promoting personal interest. The Court should deal with the matter with free, fair and independent exercise of mind in the interest of public policy/public good. The Court, after referring to the power of judicial review under article 226 of the Constitution, answered the questions raised as under:

Issue No. I: State Government is not at all free to exercise its authority under section 321 Cr.P.C. in whimsical or arbitrary manner or for extraneous considerations apart from just and valid reasons.

Issue No. II: The decision taken by the State Government for withdrawal of the case communicated to the Public Prosecutor, is open to judicial review under article 226 of the Constitution of India on the same parameters as are prescribed for invoking the authority of judicial review.

Issue No. III: The State Government is free to act under the parameters provided for to make scrutiny of criminal cases pending in subordinate courts to find out as to whether they deserve withdrawal under section 321 Cr.P.C. or not as it is in the realm of the policy decision, and call on the said score has to be taken by the State Government and same has to be based on the parameters required to be observed while moving an application for withdrawal of prosecution under section 321 Cr.P.C.

In *St. Anthony's Mundkar & Tenant Association* v. *Chief Town Planner, Town and Country Planning Department*,[62] the PIL before the Goa Bench of the Bombay high court inter alia sought the quashing of all the negative declaration and tenancy free certificates related to the subject properties as enumerated in therein as well as the quashing of the approval of Town and Country Board as well as the Conversion Sanad together with the Pollution Control Board consent. It was further prayed that the sale deeds conveying the properties in question be quashed. The primary ground was that the land which was the subject matter of the sale deeds executed in favour of the Respondent No. 8 was tenanted properties and, as such, consequently, the restrictions provided under The Goa Land Use (Regulations) Act of 1991 would apply. The impugned negative declaration and tenancy free certificates were obtained to circumvent the restrictions imposed under the Goa Land Use Act and the Agricultural Tenancy Act and in connivance with the officials and by committing fraud of the provisions of the said Acts. The Court held that on facts the orders obtained by the original owners were based on admissions of the persons who were shown to be tenants in the Record of Rights and that a substantial amount was paid to such persons so as to facilitate them to obtain such orders. The Court observed that the cumulative effect of such facts had to be examined to ascertain whether the whole exercise carried out was essentially to circumvent the provisions of law which would govern the rights of the parties and the public interest involved to ensure that tenanted lands which had been vested on the tenant was not used for any purpose other than for agriculture. The Court held that it was not dealing with the alleged fraud committed on private rights between the original owners on one side and the person shown as tenants on the other side. Rather, it was concerned whether there had been a fraud in public law and the consequences on the public interest on account of such colorable action by the parties. The Court opined that a Court of Law would not countenance any attempt which may be made to extend the operation of an Act to something else which is quite foreign to its object and beyond its scope. A party could not in mala fide exercise of the legal process indulge in an illegal expedient to defeat the objects of the statute which had imposed restrictions, in public interest, to preserve agricultural lands. The rights which

62 2017 (3) Bom CR 525.

had been reserved for the benefit of the public in maintaining the lands vested in a tenant, not to be used for any purpose other than agriculture, was to be protected and the Courts being guardians of all such rights, played a crucial role in enforcing such rights as elaborated in law. The State Government as such was expected to ensure that the provisions of section 2 of the Goa Land Use Act were strictly complied with and the lands vested in a tenant was not allowed to be divested for any purpose other than agriculture. There had to be a collaborative effort on the part of the petitioners, the State or Public Authorities and the Courts to secure the observance of the statutory rights, benefits and privileges as provided by law. The Court held that the concerned authorities would have to examine the Orders obtained and ascertain whether the aim was essentially to defeat the provisions of the statute. The Court accordingly quashed all the Tenancy Free Certificates and directed the Deputy Collector to hold a fresh inquiry on whether the land had vested in the tenants when the Goa Land Use Act came into force and not merely on the basis of the Orders which were alleged to have been obtained by committing fraud on the statute.

In *Rajiv Mohan Mishra* v. *City and Industrial Development Corporation of Maharashtra Ltd.*,[63] the PIL before the Bombay high court inter alia pertained to the legality of the draft policy of the state government that sought to provide regularization of illegal buildings. The Court found on facts that such policy was contrary to the express provisions of M.R.T.P. Act and Rules and Regulations including DCR framed there under as well as other Statutes such as the Maharashtra Land Revenue Code, 1966 and was as such arbitrary and illegal. The Court held that regularizing illegal structures erected on the public properties by suggesting that the persons who had erected illegal structures could get the land transferred in their name from public authorities was violative of article 14 of the Constitution of India. The Court however clarified that its decision should not be construed to mean that the power of the Planning Authority to regularize illegal constructions was taken away. That power existed, but it could be exercised provided illegal construction made was otherwise legal and was otherwise in terms of the provisions of the M.R.T.P. Act, Building By-laws or DCR and provisions of other laws. In short, if an application was made to the Planning Authority for regularization of the buildings erected without prior permission and if the constructions could have been permitted within the four corners of law, the statutory powers for regularization could be always exercised. The Court therefore declined to grant leave to the State Government to implement the draft policy to such extent.

In *Gautam Baburao Maske* v. *State of Maharashtra*,[64] the PIL before the Aurangabad Bench of the Bombay high court impugned the communication whereby the Under Secretary to the State of Maharashtra had directed the Collector, Beed to transfer the funds allocated to Municipal Council, Beed for implementing the construction work of roads and drainages in the extended areas of Municipal Council,

63 2017 (5) ABR 501.
64 2017 (3) ABR 791.

Beed, under the Scheme sponsored in that regard by the State Government, to the Public Works Department and to get the said works executed from the said Department. The Court found on facts that there was no provision in the Government Resolution which would empower the State Government to change the Implementing Agency. The Court held that the impugned decision was totally adverse to the interest of the public at large, and was made in highly arbitrary manner without taking into account the consequence of the said decision. The Court reiterated that the Government and the public bodies were trustees of the powers vested in them. These powers were to be exercised by the State and the State instrumentalities in a fair, reasonable, non-discriminatory and objective manner. The duty to act in a fair, reasonable, non-discriminatory and objective manner, was the facet of the rule of law in the constitutional democracy like ours. The Government and public bodies were free to choose the implementing agency in executing the works funded by them but any such selection or cancellation must demonstrate that it was unaffected by any extraneous consideration. Any decision taken in arbitrary fashion, without any transparent method or for political considerations, would be amenable to judicial review and liable to be quashed and set aside. The Court accordingly allowed the PIL, and quashed the impugned communication as being arbitrary, *malafide*, based on irrelevant considerations, without jurisdiction and for political consideration.

In *Dr. Rajendra Sadanand Burma* v. *State of Maharashtra*,[65] the grievance in the PIL before the Bombay high court was that due to reduction in malnutrition, there were multiple deaths of pregnant women, child birth deaths, problems of lactating mothers, educational policy and vocational guidance. The Court noted the steps taken for reducing malnutrition death and deaths of pregnant women, and also to discuss and deal with various other related problems. The Court observed that the Central Government had created various schemes, which were being implemented by the State Government and a Monitoring Cell had been formed to ensure that there was no pilferage of the funds, which were used by the Central and State Governments. The Court noted that programs had been evolved by the State Government to provide hot meals to the children as also nutrients and medicines to reduce their mortality. The State was asked to explore the possibility of giving primary and secondary education for tribal children in Ashram schools along with better living conditions. The Court directed the State and Central government to frame a tribal policy to look into various peculiar problems faced by tribals regarding malnutrition, malnutrition death, child birth deaths, problems of lactating mothers, educational policy and vocational guidance so that they could be brought into the mainstream.

In *Azad Hawkers Union* v. *Union of India,*[66] the PIL before the Bombay high court by the Associations of Hawkers and by hawkers in their individual capacity initially approached the Court seeking various reliefs, including the relief to restrain

65 2017 SCC Online Bom 1797, PIL No. 133 of 2007.

66 2017 (6) Bom C R 481.

all Municipal Commissioners and Chief Officers and local authorities all over Maharashtra from evicting, imposing fines and harassing the existing street vendors from the places/sites where they are carrying vending profession as street vendors. The PIL was then amended to inter alia impugn Rule 15 of Street Vendors (Protection of Livelihood and Regulation of Street Vending) (Maharashtra) Rules, 2016 as being ultra vires of sections 22 and 36 of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 has also other notifications and schemes. The Court took the view that the said Rule was within rule making power of State Government in light of Clause (j) of sub-section (2) of section 36 of the said Act which enabled the State Government to make Rules for manner of elections amongst street vendors under clause (d) of sub-section (2) of section 22 of Act. In any case, the grievance of the petitioner that the publication of the voters' list of registered street vendors had to be carried out only by local authority was totally impracticable as it would not be humanly impossible for local authority, which consists of elected members to collectively carry out such survey of the street vendors. Rather, such survey was to be carried out by some executive authority under said local authority, and the Commissioner and CEO being highest executive authorities in Municipal Corporations and Municipal Council, could very well be entrusted with such duty. Moreover, the impugned Rule provided for an opportunity to street vendor who was aggrieved by his non-inclusion. The Court held that while considering the rights of the hawkers to conduct their vending business on streets, the Court will have to balance the rights of the pedestrians to walk on the footpaths and the citizens to use the roads for the purpose of plying their vehicles, and that it could not accept the contention of the petitioners that they were free to do hawking anywhere in the city. The PIL was accordingly disposed off with directions inter alia with respect to the survey and regulation of hawking.

In *Ajit Singh* v. *Union of India*,[67] the PIL before the Allahabad high court by the publisher of a local fortnightly newspaper and spokesperson of a NGO inter-alia sought a mandamus commanding/directing the respondents to verify and demarcate (by barb/wire fencing) the defence land acquired for Air Firing and Bombing Range and further take appropriate action against the encroachers and to remove encroachment; a mandamus commanding/directing the respondents to constitute a High Level Committee to hold and enquiry against the Officers/employees of the District Administration and Defence and get the criminal proceedings launched against the culprits involved in the irregularities; as well as a CBI probe. The Court found from the material on record, the pleadings, different reports submitted by the revenue authorities, as also of the Committee constituted by the Court that large scale manipulation and fabrication of entries in the course of preparation of the record of concerned villages appeared to have taken place. It also appeared that the maps of the villages were fabricated by the revenue officials. Original maps were not available in

67 2017 (5) ALJ 466.

respect to one of the villages which had been acquired for the benefit of the Defence authorities. It was clear from the reports, which had been prepared by the Committee as well as the revenue officials, that the land had been illegally dealt with, encroached and trespassed upon, and the revenue authorities of the State, in respect of most of the land, had taken the stand that maps and records pertaining to the land in question were not available. Moreover, the Air Force/Defence Estates Officer permitted or conveniently allowed land grabbers to encroach/trespass upon the land in question to the detriment of the Defence forces. Unfortunately, after the acquisition was complete in 1950 itself and the possession was taken by the Air Force after payment of compensation, complete apathy was shown by them towards protection of the land in question, which gave ample scope not only to land grabbers/unscrupulous elements of society but even the revenue officials to manipulate and fabricate entries while preparing the record of these villages. While declining to entertain connected writ petitions filed by individual claiming to be bona fide purchases and seeking the ouster of the Air Force/Defence authorities from the land in question, the Court allowed the PIL with directions as under:

(i) The Committee that has been constituted vide order dated 19 May 2015 (for short, "the Committee") shall continue to monitor the proceedings already instituted and that would be instituted in respect of the land in question before all forums and shall take all steps and/or to issue appropriate directions to the officials, who are in charge of any such litigation, that are necessary to ensure that litigation that may ensue is neither neglected nor remains uncontested, or suffers for want of proper attention.

(ii) The Committee shall also take steps for immediate correction of land records; preparation of village maps; and, if they find it necessary, initiating appropriate disciplinary as well as penal action under the Criminal law against errant officials of the State Government as well as Defence/Air Force officers and any other person for that matter.

(iii) The Chairman of the Board of Revenue of the State of Uttar Pradesh shall personally monitor the matter and shall ensure that all necessary cooperation is extended to the Committee in locating records and maps and making available all necessary information and material that would be required to pursue and protect the interest of the Indian Air Force.

(iv) In order to facilities the work which is being carried on by the Committee, (sic) of the Air Force Station and/or the Defence Estates Officer shall coordinate with the Chairman of the Board of Revenue. We hope and trust that both the authorities shall work in close coordination, so that necessary directions can be issued to the concerned officials to facilitate the work of the Committee and to ensure that all necessary steps are taken for protecting the interest of the Indian Air Force/Union Government in the acquired land.

(v) The Committee shall also issue appropriate directions from time to time to all concerned for getting back the possession of the encroached portion of the land, out of the acquired land, from the encroachers/trespassers/petitioners by following due process of law.

(vi) The Collector and District Magistrate, Gautam Budh Nagar is directed to see that every requisition made by the Defence Estates Officer or any other officer of the Defence/Air Force, if any, or made by the Committee is immediately complied with.

(vii) It is open to the Committee to launch criminal prosecution, whenever and wherever they find it necessary, not only against the errant officers but even the encroachers, if they so desire and are so advised.

In *Sita Ram Meena* v. *Collector Jaipur*,[68] the PIL before the Jaipur Bench of the Rajasthan high court sought a direction to the respondents to remove encroachment on the National Highway No. 11 (Mahua to Jaipur) near Kanota Bus Stand so that the actual central line of the road as per the revenue record could be fixed and the road could be widened solving the problem of daily traffic jams at National Highway No. 11. It was an admitted position that the land in question at National Highway No. 11 had already been acquired and after due compensation, the possession of the same, had been handed over to the National Highway Authority of India (NHIA). The Court referred to the statutory obligation of NHAI under the Control of National Highways (Land And Traffic) Act, 2002 to remove all encroachers on the land which has been acquired for the National Highway purposes, and observed that the land appurtenant to the Highway was also required to be kept safe from encroachers in the interest of traffic safety. The Court held that the State was bound to provide necessary police protection and infrastructure for the purpose of getting removed the encroachments which have been caused on the acquired land of NHAI. The Court held that it would be the duty of the Project Director cum General Manager, NHAI to carry on regular inspection of the Highway to see that no further encroachment was made on the National Highway in future too. The exercise for removal of encroachment was directed to be conducted within a period of two months.

In *Raj Kumar Mukherjee* v. *WB Joint Entrance Examination Board*,[69] the PIL before the Calcutta high court alleged that "the wriggling tentacles of connivance, arbitrariness, interpolation and mismanagement have maligned the entire examination process pertaining to the West Bengal Joint Entrance Examination (Medical and Dental), 2016 (hereinafter referred to as WBJEEM) conducted by the West Bengal Joint Entrance Examinations Board (hereinafter referred to as WBJEEB) and have caused extreme prejudice to the students, whose hard labour of years together to emerge to be successful in WBJEEM stood frustrated and they succumbed to the illegalities perpetrated by the respondents". The Court noted that it was for redressal of such wrong caused to the candidates at large and in furtherance of the public interest involved, the guardians of some of the said candidates had approached this Court, inter alia, praying for cancellation of the said examination.

The Court observed that the examination, counseling and admission was over and the entire process was complete and any interference at this stage would extremely

68 2017 (2) WLN 387 (Raj).

69 (2017) 3 CAL L T 464 (HC).

prejudice the students who had been admitted and had pursued their respective courses for more than a year. In the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole, there was hardly any justification in law to cancel the examination by applying a unilaterally rigid standard. The Court therefore rejected the payer to set aside the entire examination. The Court noted that the WBJEEB had however admitted certain errors that undoubtedly spoke of a lackadaisical attitude on the part of WBJEEB in conducting the examination process. The Court opined that the WBJEEB could not be allowed to go scot-free for such negligence in conducting an examination upon which the fate of thousands of students was dependent. The Court expressed its dissatisfaction with the manner in which the examination has been conducted by WBJEEB and held that it was legally responsible to pay costs. The Court disposed of the PIL, while imposing costs amounting to Rs.5 lakhs to be paid by WBJEEB to the Registrar, University of Calcutta within a period of four weeks, which amount was to be kept in a separate account by the Registrar, University of Calcutta for utilization as a corpus for grant of scholarship to deserving candidates who were economically backward. The Court granted the WBJEEB would be at liberty to recover the said costs from its officers and employees upon conducting appropriate investigation and upon fixation of responsibility.

In *Mohd Mustafa* v. *Union of India*,[70] the PIL before the Lucknow Bench of the Allahabad high court challenged the state action in respect of shutting down of abattoirs and slaughter houses throughout the State, which in the opinion of the State Government, were running unlawfully without complying with the provisions of the Prevention of Cruelty to Animals Act, 1960 read with the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, the provisions of the Food Safety and Standards Act, 2006 and the Rules, Regulations and orders relating thereto, the directions issued by the apex court in earlier matters and the directions issued by the National Green Tribunal. The primary relief sought related to renewal of such licenses that were existing prior to the issuance of the Government Order by the respective local bodies and local self-government in the State, and for a further mandamus restraining the respondents not to interfere or create any hindrance in their trade and profession of either slaughtering or selling meat. Most of the writ petitions are by meat shop owners who are either engaged in the selling of buffalo meat or such bovines and others are venders of goat meat and poultry. In one of the petitions, the further prayer was for a mandamus to the Union of India and the Food Safety and Standards Authority to amend the IVth Schedule of the Food Safety and Standards Licensing and Registration of Food Business Regulations, 2011 with a further relief to construct requisite number of slaughter houses for facilitating the production and sale of meat and chicken throughout the State in rural and urban areas.

70 2017 (5) ALJ 275.

After tracing its previous orders, the Court noted that it was not the case of the State that it was making any attempt to either prohibit slaughtering or vending of animal food. The stand taken by the State Government was clearly to the effect that it is regulating this business and vending for ensuring lawful methods to be adopted and unlawful methods being prevented for carrying of such trade and business. There was no dispute that the food supply should conform to the basics of hygiene and cleanliness and food safety. There was also no dispute that such trade and business can be regulated including that through licensing provisions. There was also no dispute of the fact that such trade and business has been permitted by the appropriate regulations under the relevant laws even prior to the enforcement of the 2006 Act and the Rules and Regulations framed there under. Thus in the absence of any such plea on behalf of the State to impose prohibition of such trade and business which also was not directly reflected in the impugned Government Orders, there could not be any assumption or presumption of such prohibition or else that would violate constitutional rights and the fundamental rights guaranteed under the Constitution. The Court issued directions to the State requiring it inter alia make it known to the public at large through effective notifications and publications for everyone involved in such food trade or business to undertake such measures that may be required for either registration or licensing and at the same time, and ensure that such activities particularly where there are no facilities available, are not brought to a grinding halt, thereby interfering not only with the right of trade and business but also resulting in an impediment in supply of animal food stuff either in the urban or rural areas. The Court observed that it was expected that the State government and all its authorities shall make an endeavour to study the social, the economic and the legal impact and the practicality of implementation with a view to implement the laws as a Model Social Welfare State under the secular Constitution with the objective of ameliorating the conditions in this field of trade and business, hygiene, sanitation and healthy food for its citizens on the anvil that it has the duty to do so. The Court held that it would be open to all the petitioners and such other persons to apply for registration or licenses as the case may be before the respective authorities under the 2006 Act and the 2011 Regulations and it shall be obligatory on the part of such authorities to assess and pass orders informing the applicants about the same. The Court further directed that the local bodies shall be obliged to consider and grant No Objection Certificates as and where required under the 2011 Regulations.

In *Ramesh Pandey* v. *Election Commission of India,*[71] the PIL by a politician before the Uttarakhand high court impugned the use of EVMs for voting to conduct election. The Court took the view that the use of EVMs for voting to conduct election would enhance transparency and credibility in voting process. The Court held that prima facie it appeared that EVMs were not hackable. There could not be any manipulation at manufacturing stage, results could not be altered by activating a Trojan Horse through a sequence of key presses. The Court opined that these EVMs also

71 AIR 2017 Utr 191.

could not be tampered during course of transportation or at place of storage. The Court observed that the Election Commission had successfully held free and fair elections and that it could not permit political parties to lower down image and prestige of constitutional body. The Court opined that it was the duty of the Courts to preserve, promote, nurture and maintain independence of constitutional bodies and to insulate them from unhealthy criticism. The foundation of democracy would be weakened in case this tendency, on the part of certain sections of the society to damage the institution by leveling unsubstantiated allegations, was not curbed. The right of freedom of speech and expression does not permit to level unsubstantiated charges against the functionaries of the constitutional bodies. Taking the view that the holding of free and fair election was a basic feature of constitution and that the faith of people in election process was required to be restored, the Court restrained all the recognized national political parties, recognized state political parties, other political parties, Non-Governmental Organizations (NGOs) and individuals from criticizing the use of EVMs in the recently conducted elections of the State Assemblies even by approaching the electronic media, press, radio, Facebook, twitter etc. till the decision of the election petitions. Such restraint order, according to the Court, was in larger public interest.

In *Citizens Welfare Society* v. *Union of India*,[72] the PIL by the Citizens' Welfare Society before the Hyderabad High Court for the States of A.P. and Telengana sought the declaration to the effect that the action of the respondents, in compelling Cable T.V. subscribers to purchase set top boxes ("STB" for short) and in threatening cable operators not to carry on the existing analogue form of transmission with effect from the dates mentioned in the notification, was unlawful and in violation of articles 14, 19 and 21 of the Constitution of India; and to consequently direct the respondents not to stop transmission of T.V. channel signals in analogue form, and to implement the digital addressable system transmission along with analogue form. The Court examined section 4(A) of Cable Television Networks (Regulation) Act, 1995, as amended, as also its explanation to hold that the said provisions require all signals to be transmitted only in encrypted form through digital addressable system, and transmission of signals in analog form was no longer permissible. The Court dismissed the PIL, holding that the impugned notice issued by Government prohibiting transmission of signals in analog form in specified areas beyond sunset date did not fall foul of section 4(A) of Act.

In *Krishna Pratap Kaushik* v. *State of UP,*[73] the PIL before the Allahabad high court sought the quashing of the allotment of land made in favour of the respondents alleged without advertisement and on account of corruption. The Court noted that the primary issue which fell for judicial scrutiny in all such cases was whether the process adopted by the State for grant, distribution or conferment of largesse was fair and in accord with the principles enshrined in article 14 of the Constitution. The process for

72 2017 (4) ALT 123.

73 2017 (3) ALJ 755.

selection must answer the characteristics of being unbiased, not designed to confer undue advantage upon any particular applicant and untainted by the vice of nepotism or favouritism. The Court also referred to the case law for the proposition that there is no constitutional mandate in favour of auction under article 14. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under article 14 and its role is limited to that extent. Essentially, whenever the object of policy is anything but revenue maximization, the executive is seen to adopt methods other than auction.

The Court found on facts that the impugned allotment was made in terms of the policy of the U.P. State Industrial Development Corporation which stood enumerated in operating manual, and that the contents of processes enumerated therein had been approved by Board of Corporation. The PIL had not challenged the policy as adopted and implemented by the Corporation. The Court further found that the allotment in favour of the respondents was not a measure or procedure adopted by the Corporation for first time; rather the rates for allotment had already been mandated and fixed leaving no discretion in the hands of the Corporation. The Court therefore held that the action of the Corporation was fair and reasonable. The Court accordingly dismissed the PIL.

The Court also cautioned against the possible misuse of PIL by targeting the working of a particular company and leveling allegations of misfeasance leveled. The Court held that notwithstanding a PIL litigant being freed and unshackled from the normal rigors of procedure and the essentially standing in the position of an informant, it needed to be emphasized that a PIL nonetheless must be presented upon facts which had been duly verified and after the PIL litigant had undertaken the requisite enquiry with regard to the veracity of the allegations levelled. The presentation of a PIL must necessarily be preceded by due thought, circumspection, examination and analysis. If these aspects were not borne in mind, the Court would be unnecessarily burdened with matters which would unjustifiably clog its docket and compelling, serious claims sidelined and pushed to the fringe of the justice delivery system. The Court, while dismissing the PIL, noted that the petitioner had failed to apprise Court about the policy of Corporation or the fact that allotment rates had been fixed by high powered committees, and further that he had made no effort to enquire into past allotments made by Corporation under that very policy initiative.

In *Pandurang Bapu Khavare* v. *State of Maharashtra*,[74] the PIL by a farmer before the Bombay high court sought a direction against State authorities praying that certain land at Chikhalwadi, TalukaShirala, District Sangli be permitted to be used as 'Gairan' (land for grazing of cattle) as also water pond situated therein be permitted to be used for the purpose of drinking water for the cattle for common use by the villagers. The Petitioner sought a further direction that any illegal ploughing by unknown persons on the said land be prohibited. The State however placed on record documents to show that the land in question was a "private land" and not the "gairan land" and that the owners of the land in question could thus deal and dispose of the

74 2017 (3) ALL M R 746.

land in question in accordance with law. In light of such record, the Court found that the land in question was not of the ownership of village panchayat so that they could assert legal rights to be freely used by the villagers. The Court observed that it may be that a portion of land was used for the purpose of grazing or the water pond in the land was used for providing drinking water for the cattle. However, these factors could not affect the ownership of the land, so as to permit the petitioner to contend or assert any legal rights of villagers to use the land for grazing of cattle. In any case, if any easementary or any other legal rights as asserted by the petitioner were created in favour of the villagers or any other persons, it was for the petitioner or for these persons to assert these legal rights before appropriate forum by leading evidence. This inquiry could not be undertaken in exercise of jurisdiction under article 226 of the Constitution in a PIL. The Court accordingly dismissed the PIL, clarifying that the petitioner was free to adopt any other remedy to assert the ownership and title of the villagers in respect of the land in question, in appropriate proceedings.

In *Krishna Saran* v. *Union of India*,[75] the PIL before the Lucknow Bench of the Allahabad high court questioned the status of the programs that were being depicted through a telecast on various television channels that have been reflected in the petition and the supplementary affidavit filed of the programs of the respondent 'Nirmal Baba', which the petitioner alleged to be in violation of the provisions of the Cable Television Network Rules, 1994 particularly rule 6 thereof. The Court noticed that the respective channels that were telecasting the specific program had not been made party to the writ petition. The Court held that no direct mandamus could be issued in this regard as the proper and necessary parties were not before the Court. The Court disposed of the PIL granting liberty to the petitioner to pursue the matter before the authorities to take appropriate action in case it is found that the provisions have been violated.

In *Jagate Raho Party Registered* v. *D P Thakur*,[76] the PIL before the Gujarat high court challenged the appointment of the State Information Commissioner made by the State while exercising powers under section 15(3) of the RTI Acton the ground that he was not eligible for the post in question. The Court noted that the Committee constituted under section 15(3) of the RTI Act had kept in view the statutory requirements as also the case, while considering the available material produced before it and thereafter found individual as eligible for the post in question. The Court therefore found that no illegality had been committed by the State in making such appointment. The Court dismissed the PIL, holding that the scope of judicial review was very limited and that it could not sit in appeal over the decision taken by the Committee constituted under the RTI Act.

In *Rituraj Mishra* v. *Govt. of Uttar Pradesh*,[77] the PIL before the Lucknow Bench of the Allahabad high court sought the framing rules and laws and guidelines

75 2017 (4) ALJ 744.

76 2017 (3) RCR (Civil) 50.

77 2017 (4) ADJ 684.

in respect of the recent pronouncement by the government for taking the steps to curb such activities that led to the formation of an Anti-Romeo Squad so that harassment should not be the purpose of execution of any such stated objective. The Court referred to its earlier judgment in this regard and the directions made pursuant thereto. The PIL also took an objection to the name of the squad as Anti-Romeo Squad. The Court held that this was not a justiciable issue unless any offensive or punishable language was used. The Court explained that the action which was being taken or was proposed to be implemented was in order to protect the weaker sex from being subjected to any harassment or any incident that was likely to reach up to the stage of an offence and disturb the peace and harmony of the society. The object appeared to be to prevent any mishap. The Court sought to remind the petitioner that the play 'Romeo and Juliet' was known widely as a romantic play, and which had been staged throughout the world and was also a subject matter of study of English Literature in Institutions including Higher Institutions. The Court cited from Act II Scene 2 of 'Romeo and Juliet' the phrase "What's in a name? That which we call a rose, by any other word would smell as sweet" to take the view that "all this hue and cry about a name having been used, has been raised without even referring to the context". According to the Court, the government "may have used the name to make it look more attractive, to make it captivating or also to catch the sentiments of the people. Such words are used at times to bring about an influence or create an impression about the purpose for which the name is being used. It is not to create any deception and the usage might be a matter of coincidence. At times a fascinating and inspiring name is used like an advertisement so that the caption of the words dwells on every tongue. It is not necessarily to be construed as a disparaging remark. This may also be a matter of understanding and also a matter of drafting inasmuch as those who know about a name may not know how to use it. A respected name can also be inappropriately used but it does not necessarily mean that it is with an idea or motive to adversely describe a particular culture or civilization. That apart this also does not give any rise for an interpretation by a Court of law."

The Court opined that the government appears to have come up with the idea of 'Preventive Policing' in order to curtail incidents of eve-teasing. The Court reasoned that "eve-teasing incidents usually take place in and around institutions that are primarily for girls or universities or such places of public importance that are visited by females. The preventive measure is to prevent any annoyance, irritation or cause any tension to any such member of the female sex while visiting such public places. Thus, it is for curtailment of an attitude that has developed in society leading to a sense of insecurity that the Government has taken steps by naming the Squad as Anti-Romeo Squad. This necessarily does not mean that the State Government or the police is averse to the name and character of Romeo or that Romeo was an eve-teaser as understood in today's context". The Court declined to entertain the PIL without any further comments on the question relating to the name of the Squad as chosen by the State Government.

In *Jayant Bhagwantrao Satam* v. *State of Maharashtra,*[78] the PIL before the Bombay high court sought a declaration that the strike by the employees of the State Transport Corporation was "illegal and unconstitutional" and sought mandatory relief to direct the employees of the State Transport Corporation to resume their duties forthwith. The Court noted that the Respondent-Union indeed undertook public utility service which was so evident from the large network it had and the fact that it served 7 million passengers daily on 13,700 routes across the State in 16,500 buses. Further, because of the strike by the employees of the Corporation, life of people in the rural areas had heavily disturbed and virtually came to stand still. The Court held that judicial notice could be taken of the fact that private transport operators do not ply their buses on every route and as such, there were no transport facilities available in the interior parts of the State except that of State Corporation. Judicial notice could also be taken of the fact that since last four days, the commuters, children, patients, handicapped persons, senior citizens were facing immense difficulties and as such, transport system in the rural parts of the State had collapsed to the considerable extent. The Court held that the employees could not claim that they could take the society ransom by going on the strike and even if there was injustice to some extent, they had to resort to machinery provided under different statutory provisions for redressal of their grievance. Since the services of the Corporation were in the nature of public utility and since the strike had caused immense inconvenience to the rural population and since the respondent, the Court took the view that the strike by the employees of the State Transport Corporation of Maharashtra was prima-facie, illegal. The Court therefore inter-alia directed the respondent, Unions to inform its employees that the Court has directed them to resume their duties forthwith.

XVI MISUSE OF PIL

In *Suraz India Trust* v. *Union of India*,[79] the Supreme Court found that the petitioner Trust and its chairman had filed several frivolous PIL cases which had been dismissed. The present PIL sought a declaration that section 3 of the Judges (Enquiry) Act, 1968 be held unconstitutional, being violative of article 124(4) of the Constitution. The Court expressed its doubts on whether the PIL was filed bona-fide. The Court noted that different contempt petitions filed by petitioner against a Chief Justice (whilst he was still in office), and against the Secretary General of the Court, amongst others, were wholly groundless, baseless and ill-founded. The waste of judicial time of the Court was a matter of serious concern. When the petitioner did not get the orders that it hoped for (or, felt it was entitled to), the petitioner pointedly expressed its anger, towards all and sundry, and even by name. The petitioner took its grievance, to the highest executive functionaries in the country. The petitioner agitated its claim, by airing its grievances to the Chief Justice of India and the Judges of the Court - at their

78 (2017) IV LLJ 740 Bom.

79 (2017) 14 SCC 416.

private residences. The petitioner aired its protestation, even against the Secretary General of the Supreme Court. The chairman of the petitioner Trust who appeared for the petitioner, expressed his ire even against six Judges of the Rajasthan high court, including its Chief Justice, and against three Judges of the Supreme Court, besides its Chief Justice. The Court found the allegations to be imaginary and scandalous and directed that the petitioner and its chairman shall henceforth refrain absolutely from filing any cause in public interest before any Court in the country, and to place the copy of the order on record in all pending PILs, whether before the Supreme Court or before any other High Court, which may have been initiated by them. The Court imposed costs of Rs. twenty five lakhs for wastage of judicial time to be deposited with the Supreme Court Advocates on Record Welfare Trust within three months.

In *Manohar Lal Sharma* v. *Sanjay Leela Bhansali*,[80] the PIL before the Supreme Court sought that a film titled "Padmavati" should not be exhibited in other countries without obtaining the requisite certificate from the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952 and the Rules and guidelines framed there under and further to issue a writ of mandamus to the Central Bureau 2 of Investigation to register an FIR against the film makers and their team members for offence punishable under section 7 of the Act read with sections 153A, 295, 295A, 499 and 500 of the Indian Penal Code read with section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 and to investigate and prosecute them in accordance with law.

The Court found that the pleadings were absolutely scurrilous, vexatious and untenable in law, and that rambling of irrelevant facts only indicated uncontrolled and imprecise thinking and exposed the inability of the counsel. The Court accordingly struck out part of the pleadings. As regards the relief sought, the Court held that when the grant of certificate is pending before the CBFC, any kind of comment or adjudication by the Court would be pre-judging the matter. The Court observed that as far as sections 499 and 500 of the IPC was concerned, police had no role and that as far as the other offences are concerned, it was unfathomable how any offence was made out. There was no basis for this Court to direct registration of an FIR and we have no hesitation in stating that the prayer is absolutely misconceived. The Court held that the PIL was filed even before the CBFC, which was the statutory authority, took a decision, and that this was a most unfortunate situation showing how PIL could be abused. The Court observed that "the hunger for publicity or some other hidden motive should not propel one to file such petitions. They sully the temple of justice and intend to create dents in justice dispensation system. That apart, a petition is not to be filed to abuse others". The Court accordingly dismissed the PIL.

In *Subramanian Swamy* v. *Delhi Police,*[81] the PIL filed before the Delhi high court by a BJP member and a lawyer sought Court monitored SIT investigation or a CBI investigation in the "murder case of Late Sunanda Pushkar". The principal

80 2017 (13) SCALE 776.

81 2017 (166) DRJ 473.

grievance was that the investigation by the Delhi Police into the death of the late Ms. Sunanda Puskhar was being unreasonably delayed and that it was an "extreme example of the slow-motion of the criminal justice process and the extent to which it can be subverted". The Court found that the PIL was replete with broad and sweeping allegations against named persons but the petitioners did not think it fit to arraign them as respondents or offer a valid explanation for the failure to do so. The Court that the petitioner did not disclose in the PIL that he was a member of the Bharatiya Janata Party or that the persons he named are members of the Indian National Congress. The Court held that since the foundation of the PIL concerns the alleged conduct of the named persons, the failure to disclose a material fact was a serious omission which could not be easily condoned. The Court further found that nothing had been placed on record to probabilise, let alone substantiate, the vague and sweeping allegations made in the petition.

The Court held that it was left with a distinct impression, from what has been observed hereinbefore, that this was perhaps a textbook example of a 'political interest litigation' dressed up as a PIL. The Court observed that it should be careful in not letting the judicial process be abused by political personae for their own purposes, whatever the nature of the matter may be. That was not to say that no political person can file a PIL. It was only that, in such instances, particularly where the principal allegations were against political opponents, the Court should be cautious in proceeding in the matter. The Court had to be satisfied that the allegations were based on some credible material and were made with a sense of responsibility. On merits, the Court found from a careful examination of the status reports filed that the investigation being carried out by the SIT could not be said to be 'botched up' or under the influence of anyone. The Court also noted that one day prior to the PIL being heard by the Court for the first time, the entire petition was apparently available on the internet. The Court held that when the Court was seized of petition of this nature where allegations of a very serious kind were made against individuals the PIL petitioner should be extremely circumspect in placing such a petition in the public domain even before it was properly considered by the Court. Placing of such material on the net or in the social media could have irreversible consequences. This caution should be exercised particularly in matters where the reputation and privacy of the individuals may be involved.

The Court further observed that PILs filed in the Delhi High Court have to conform to the Delhi High Court (Public Interest Litigation) Rules, 2010 ('PIL Rules'). The Court directed that hereafter every writ petition (which includes a PIL petition) filed in the Registry (and not obviously a letter or post card) should be supported by an affidavit which, apart from complying with the legal requirements in terms of the governing Rules of the High Court, should clearly state which part of the averments (with reference to para numbers or parts thereof) made (including those in the synopsis and list of dates and not just the petition itself) was true to the Petitioner's personal knowledge derived from records or based on some other source and what part was based on legal advice which the Petitioner believes to be true. In light of its observations, the Court dismissed the PIL.

In *ArunNandal @ Arun Chandra Mandal* v. *State of Jharkhand*,[82] the PIL before Jharkhand high court pertained to the implementation of the Bihar Deed Writers Licencing Rules 1996, and more specifically to the issuance of licence to deed writers in the Sub Registry Office of Rajmahal, District Sahibganj. The petitioner described himself as a social worker having no direct or indirect personal interest. The Court found on facts from the reply of the Respondent that the petitioner was an advocate of Rajmahal and was doing the work of deed writer. The Court noted that the Jharkhand High Court (Public Interest Litigation) Rules, 2010 required the petitioner to give his/her full and complete details so as to reveal his/her interest, credentials, and qualifications relevant for the PIL along with the declaration that he/she had no personal, direct or indirect, interest in the subject matter of the PIL. The Court found that the petitioner had suppressed the relevant facts related to his credentials and absence of direct or indirect interest in the cause. The Court issued a stern warning to the petitioner not to indulge in any such ventures by suppressing correct facts about his credentials from the court. The Registry was directed to be careful in examining any PIL filed on behalf of the present petitioner in future as well. However, keeping the issue regarding the implementation of the Bihar Deed Writers Licencing Rules 1996 was indeed of larger public interest, the Court found it appropriate to take up the case *suo moto* i.e. 'The Court on its own motion' after deleting the name of the petitioner from the matter.

In *Premji Keshavji Chedda* v. *Central Vigilance Commission*,[83] the PIL before the Bombay high court sought a writ of mandamus and directions to the Respondents to investigate the complaint of the petitioners and take an appropriate action against the guilty persons, who had caused loss to the tune of Rs.2.45 crores to the Exchequer of Government of India, and also to constitute a team of investigating agency to monitor the investigation. It transpired that two respondents, which were Trusts registered with the Charity Commissioner, Maharashtra State, Mumbai, carried on religious activities, and constructed several temples in Mumbai and Gujarat. On 26 January 2001 there had been an earthquake in district Kutch, southern Gujarat. As a result of the said earthquake, several buildings were damaged and there was loss of life and public property. The respondent Trust had insured the temple by making payment of yearly premium. In the said earthquake, the temple constructed by respondent Trusts was also severely damaged. The total amount of insurance was about Rs.30 crores. The respondent Trusts however, claimed around Rs.6 crores. Their claim was settled for Rs.2.45 crores. A complaint was filed by the petitioners alleging that the amount of insurance was claimed by the respondent Trusts which was settled by respondent National Insurance Co. Ltd. though there was no damage to the temple and it was a fictitious claim. The Insurance company and subsequently the Central Vigilance Commission made in depth study and inquired into the said complaint and

82 2017 SCC Online Jhar 2931, W.P. (PIL) No. 2865 of 2016.

83 2017 (6) ALL M R 626.

closed the same. The petitioners again made a complaint in 2011 followed by filing the PIL.

The Court found from the material placed on record by the respondents that the petitioners were habitual black-mailers and they filed several complaints against several Trusts, in which petitioners were involved in some manner. The Court found that the temple was damaged. The Court held that it could not be said that the issue raised in the PIL was of any public interest. Moreover, the claim was allowed in November 2001 and the PIL has been filed in 2014. There was gross delay on the part of PIL-petitioners in approaching the Court. The Court noted that very often, PIL- petitioners took an adversarial stand and continued to agitate the matter. Ideally speaking, the role of PIL- petitioners was only to bring the issue to the notice of the Court and thereafter assist the Court. The Court found that the present PIL had been fought in an adversarial manner. The Court observed that it had come across several PILs, which were not only false and frivolous, but also actuated by malice and with intention of harassing the respondents. The Court held that it had no manner of doubt that this was one such PIL, in which PIL - petitioners were in habit of harassing the trustees of several Trusts. The Court pointed out that the petitioners had no business to file the PIL, particularly after lapse of almost 10-12 years, and that too when investigation was made by the CVC and the National Insurance Co. Ltd. The Court therefore dismissed the PIL, with costs of Rs.25,000/-, which amount was directed to be deposited within four weeks in the Court, failing which the same was to be recovered as arrears of land revenue.

In *M Appavu* v. *Chief Secretary to Govt. of Tamil Nadu*,[84] the PIL before the Madurai Bench of the Madras high court sought a direction forbearing the authorities from supplying Tamirabarani river water either for the preparation of soft drinks or drinking water under the name of mineral water or soft drinks to the Prathishta Business Solution Private Limited and South India Bottling Company (P) Ltd. The Court found on facts that there was no deviation of doctrine of public trust, and that considering surplus water flowing into sea, minimum drawl of water by companies pursuant to contractual agreement and generation of employment in area, the PIL did not show any lamentable state of affairs.

Another grievance of the petitioner was that the national sanctuary - spotted deer park - protected area has been declared by the Government of Tamil Nadu in Gangaikondan village and the factories of certain companies were situated within 4 km radius of the said protected spotted deer park and therefore, there would be an endangered situation arise to the protected spotted deer inside the national sanctuary. According to the Government, the government order declared the spotted deer park with the boundaries and there is no 4 km radius restriction. Further, there was six-way highway lane in between the deer park and Sipcot area. Several other units were functioning in the same Sipcot area at Gangaikondan village.

84 2017 (7) FLT 573.

The Court noted that that the petitioner had admitted in his rejoinder that he had been the advocate for one of the companies for some years. The petitioner's legal services were dispensed with due to unethical practice. The petitioner had filed various petitions against the company before various fora and several cases before this Court and National Green Tribunal, Southern Zone. The Court observed that the person having personal interest should disclose the same, when he files public interest litigation petition, as per the rules framed by the Court to regulate public interest litigation by virtue of article 226 of Constitution. The Court held that it had no hesitation to conclude that the petitioner had approached the Court with malafide intention for vindicating enmity. The Court dismissed the PIL holding that a person prompted by personal gain or any oblique consideration had no *locus standi* to file a PIL nor could PIL be allowed to be misused for vindicating enmity.

In *Manoj Jaswantlal Kapadia* v. *State of Maharashtra*,[85] the PIL before the Bombay high court challenged the action of the Municipal Corporation in issuing Development Right Certificate (for short 'DRC') in favour of the private respondent, a developer, on the ground that issuance of such certificate has caused huge loss to the public exchequer, and sought appropriate civil and criminal action as also action under the provisions of service law against the authorities for issuing the DRC. The Court found that the Municipal Corporation had acted in accordance with the DC Regulations in considering the application of respondent for grant of DRC in question. It was also not in dispute that the work of amenities was undertaken by the said respondent to the satisfaction of the Municipal Corporation in regard to the quality and rates. It was also not in dispute that the Rules clearly provided for grant of DRC if construction of such amenities was undertaken by the respondent as permissible under the DC Regulations. The Court accordingly upheld the legality of the grant of DRC to the said respondent. While dismissing the PIL, the Court found that the PIL was motivated. The petitioner simplicitor claimed to have espoused a public cause and that he had no personal interest in the case. However, the Court found that the petitioner was also a dealer in the real estate and had a given agenda against the private respondent which was uncontroverted. The Court observed that nothing prevented the petitioner from honestly disclosing in the petition that he was in the same business, and that the petitioner had not approached this Court with clean hands and in fact had suppressed material facts in approaching in a PIL. The Court found that the PIL was not bona fide and was an abuse of the process of law.

The Court held that it is well settled that a PIL cannot be a camouflage to foster personal dispute. Such petitions were to be thrown out. There must be real and genuine public interest involved in the litigation. PIL could not be invoked by a person to further his personal causes or satisfy his personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. The Court dismissed the PIL with exemplary cost quantified

85 AIR 2017 Bom 101.

at Rs. five lakhs to be deposited by the petitioner within a period of four weeks with the Maharashtra Legal Services Authority failing which the office was directed to initiate recovery as per law.

XVII CONCLUSION

Prior to the initiation of PIL, the legal system in India functioned within the parameters of Anglo-Saxon jurisprudence, and the traditional judicial role of Indian courts was that of adjudication. The Indian courts adopted the adversarial system of litigation, insisted upon observance of procedural technicalities like *locus standi* and adhered to traditional rules of practice evolved in public interest like *res judicata* and *laches*. Further, the Supreme Court, like any other Anglo-Saxon Court, swung in its approach to judicial review between positivism (i.e the theory that laws and their operation derive validity by virtue of having been enacted by an authority) and natural law tradition (i.e. the belief that rights are inherent and inalienable, and are conferred not by act of legislation but by God or nature). Starting on a positivist note in 1950,[86] the Court subscribed to the natural law school of thought by 1967,[87] only to return to positivism by 1976[88] and then again adopt the natural law approach by 1978[89] – all within the Anglo-Saxon jurisprudence.[90]

The advent of PIL in 1979 brought with it substantive due process and redefined the judicial role as also the power of judicial review entailed by such redefined role. With the expansion of PIL by the Court in 1981 to include matters relating to governance or to the protection of diffuse, collective and meta-individual rights of the public, the Court enlarged the scope of judicial review beyond recognition. The implication of a matter having a *lis* (which could have been litigated as a class action or a representative action) being litigated as a PIL lies, as stated earlier, in the Court being relieved of the aforesaid limitations of the Anglo-Saxon jurisprudence. As a result, the judge wields tremendous power of judicial review, and discretion, in such cases involving 'diffuse, collective and meta-individual rights' that are present in virtually every area of governance. Such assumption of judicial power, which is perhaps the widest and deepest in the world, would necessarily result in the subjective, and hence arbitrary, exercise of the power of judicial review. Surely, impartiality is the essence of justice, just as justice is of constitutional governance and morality. The situation is further aggravated by a few other factors somewhat peculiar to the Indian judiciary. A brief reference may be made to some of these factors, each of which would merit a separate discussion.

86 As exemplified by *A.K. Gopalan* v. *State of Madras,* AIR 1950 SC 27.

87 As exemplified by *Golak Nath* v. *State of Punjab,* AIR 1967 SC 1643.

88 As exemplified by *ADM Jabalpur* v. *Shiv Kant Shukla,* AIR 1976 SC 1207.

89 As exemplified by *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597; *Sunil Batra* v. *Delhi Administration,* AIR 1978 SC 1675.

90 See Aman Hingorani, "Indian Public Interest Litigation: Locating Justice in State Law", *XVII DLR* 159 (1995).

A survey of reported judgements of the Court would necessarily refer to those decisions that are reasoned. However, there are PIL and non-PIL cases that are dismissed by the Court without giving a reason for such dismissal. Indeed, the Supreme Court has chosen to follow such practice, notwithstanding that the right to move the Supreme Court to enforce fundamental rights is itself guaranteed by the Constitution under article 32. The Court recorded in *In re D. C. Saxena*[91] that "day in day out in countless cases, while refusing to interfere with the orders, this Court dismisses the petitions, be it filed under article 32 or 136 of the Constitution *in limine*". The Court gave a rather curious justification for such practice: "Supreme Court being the highest judicial forum, the need to record reasons is obviated since there is no further appeal against the order of this Court. Recording reasons is not, therefore, necessary nor called for".[92]

The Court apparently overlooked the fact that reasoned decisions are not only vital for the purpose of showing the citizen that he is receiving justice but are also a healthy discipline for all those who exercise power over others. A judicial decision is based on reason and is known to be so because it is supported by reasons – a refusal to give reasons would simply imply that there are no good reasons to give. The requirement of giving reasons keeps the judge himself under trial. Lord Denning condemns a decision without reasons to be an arbitrary decision, which "may be based on personal feelings, or even on whims, caprice or prejudice". Lord Scarman opines that the "evidence and arguments should be publically known so that society may judge the quality of justice being administered in its name".[93] Lord Diplock reasons that this "provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains public confidence in the administration of justice".[94] Indeed, the Apex Court itself held in *Mustaq Ahmed* v. *State of Gujrat*[95] that "the requirement of recording reasons for summary dismissal, however concise, serves to ensure proper functioning of the judicial process".

Further, while there may be no appeal against the order of the Supreme Court, such order is subject to review under article 137 of the Constitution. For the Court to properly exercise its power of review, as also for the recent innovation of curative petitions, it is imperative that the order under review must contain reasons for whatever view is taken. Similarly, there is simply no justification for the Supreme Court not to record reasons while deciding review petitions under article 137 of the Constitution, particularly when the Supreme Court Rules permit the disposal of such petitions by circulation in the Chambers of the judges. The same requirement must be equally applied to the disposal of curative petitions.

91 AIR 1996 SC 2481 at 2498.

92 *Id.* at 2485.

93 *Home office* v. *Harman*, (1983) 1 AC 280.

94 *Attorney General* v. *Leveller Magazine Limited*, 1979 AC 440.

95 AIR 1973 SC 1222 at 1225.

Then there is the vexed issue of judicial accountability in India.[96] It will be readily agreed that there is virtually no effective mechanism to ensure accountability of judges. Impeachment is a process so cumbersome that it can confidently be ruled out. Other methods of ensuring judicial accountability like judicial audit of each judgement of the superior courts have still to take root. There simply is no culture amongst the legal academia or academic institutions of vigorously evaluating each judgement of the superior courts for its strengths and weaknesses.

As regards judicial appointments, much has been written about the defects of the collegium system. Without getting into that debate, one can safely say that any model where a handful of judges choose judges for appointment in an opaque manner cannot be said to be satisfactory, apart from the fact that there is not a single provision in the Constitution sanctioning the setting up of such collegium.

The structural changes that could, and must, be undertaken by the Supreme Court to address these aggravating factors are beyond the scope of this discussion. It will suffice to note that each of the said factors: namely, the arrogation by the Court of the widest possible amplitude of judicial review through the aforesaid expansion of the scope of PIL coupled with the absence of any requirement for the Court to give reasoned decisions, lack of judicial accountability and an obviously defective system of making judicial appointments is a recipe for disaster for any judicial institution.

The judiciary in India has enjoyed, and continues to enjoy greater legitimacy and respect in the eyes of the people in comparison with the other organs of the State. This faith is a result of the manner in which the Supreme Court has exercised its power of judicial review to deliver concrete relief to millions of the poor, destitute and marginalized in response to PILs filed on their behalf. However, one regularly witnesses the superior judiciary being rocked by some crisis or the other, and this is, in large measure, due to the subsequent undue expansion of PIL compounded by the aggravating factors referred to above. It is imperative that remedial steps are taken on a war footing for the public at large to retain its faith in the judiciary and the rule of law. And one of these steps would be to revisit the proper ambit of PIL so as to limit the scope of subjective discretion of the Court in matters that have a *lis*. After all, in the words of Raymond Moley, "the creation of constitutional governance is the most significant mark of the distrust of human beings in human nature. It signalizes a profound conviction, born of experience, that human beings vested with authority must be restrained by something more potent than their own discretion".

96 See Aman Hingorani, "Judicial Accountability through Writs, Journal of Bar Association of India" XXVII I.A 91 (1996-97).