18

PUBLIC INTEREST LITIGATION

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I INTRODUCTION

THE YEAR 2020 witnessed the spread of the COVID-19 pandemic in India, with the sudden national lockdown on March 24, 2020 throwing up a haunting spectacle that drew parallels with the horrors of the Partition. In a habeas corpus petition, *A. P. Suryaprakasam* v. *Superintendent of Police*,[1] the High Court of Madras narrated the terrible state of affairs in its order of May 15, 2020 as under:

> One cannot control his/her tears after seeing the pathetic condition of migrant labourers shown in the media for the past one month. It is nothing but a human tragedy. When the lock down was announced at the end of March 2020, lakhs and lakhs of migrant workers were stranded throughout the country. Most of the workers lost their jobs, no shelter is said to have been provided apart from lack of supply of adequate food. After waiting for a considerable time, they started migrating to their native states by foot. It is very unfortunate that those persons were neglected by all the authorities. The heart breaking stories are reported in the print as well as visual media that millions of workers were compelled to start walking to their native States with their little children carrying all their belongings over their head, surviving on the food provided by good Samaritans, as no steps were taken by the Governments to help those migrant workers. It is also reported that some people starved to death due to hunger. 16 workers working in a steel factory in Julna, Maharashtra, who were sleeping on rail tracks while returning to Madhya Pradesh were crushed to death near Karmad around 30 km from Aurangabad by a goods train on 08.05.2020. Even after the sorrow and sufferings of the migrant workers were reported in the media, nothing happened for the past one month as there was no coordinated effort between the States.

Given the magnitude of the suffering, one would have expected the Supreme Court to have immediately swung into action under article 32 of the Constitution to

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1 2020 SCC OnLine Mad 1004, H.C.P.No.738/2020.

protect the fundamental rights of lakhs of bewildered and helpless men, women, children and toddlers, at least when petitioned to do so.

Alakh Alok Srivastava v. *Union of India,*[2] being a PIL before the Supreme Court, highlighted the plight of the hapless migrant labourers and sought redressal of their grievances. The court, in its order of March 31, 2020, referred to the status report filed by the Central Government and found that it was "satisfied with the steps taken by the Union of India for preventing the spread of Corona Virus [COVID 19] at this stage". The court recorded the statement made by the Solicitor General of India "on instructions that at 11 A.M. today, there is no person walking on the roads in an attempt to reach his/her home towns/villages". The court further stated that it was "informed that the labourers who are unemployed due to lock down were apprehensive about their survival. Panic was created by some fake news that the lock down would last for more than three months."

The court held that "(t)he migration of large number of labourers working in the cities was triggered by panic created by fake news that the lock down would continue for more than three months. Such panic driven migration has caused untold suffering to those who believed and acted on such news. In fact, some have lost their lives in the process. It is therefore not possible for us to overlook this menace of fake news either by electronic, print or social media."

After referring to the provisions of the Disaster Management Act, 2005 that penalize a person who makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, the court stated that it expected "the Media (print, electronic or social) to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated. A daily bulletin by the Government of India through all media avenues including social media and forums to clear the doubts of people would be made active within a period of 24 hours as submitted by the Solicitor General of India. We do not intend to interfere with the free discussion about the pandemic, but direct the media refer to and publish the official version about the developments."

As it transpired, the national lockdown that had been ordered in the evening of March 24, 2020 for 21 days was extended on April 14, 2020 until May 3, 2020. The national lockdown was then extended on May 1, 2020 till May 17, 2020 and later to May 31, 2020. The lockdown was further extended for containment zones till June 30, 2020. The news that the initial lockdown would be extended thus proved to be correct. It is, therefore, debatable whether the mass migration was caused by any "fake" news or by the very prospects of survival in the absence of any ameliorative measures by the State prior to suddenly imposing the national lockdown on March 24, 2020 at a few hours notice.

Further, contrary to the statement of the Central Government before the Supreme Court to the effect that at 11 am on March 31, 2020 "there is no person walking on the roads in an attempt to reach his/her home towns/villages", a mere glance at TV visuals

2 2020 SCC OnLine SC 345, Writ Petition (Civil) No. 468/2020

would have confirmed that as of March 31, 2020 and indeed for many weeks thereafter, there were people walking on the roads in a desperate attempt to reach their home towns/villages – a position subsequently recorded even in judicial orders. In fact, the Supreme Court itself took suo moto cognizance *In re: Problems and Miseries of Migrant Labourers*[3] on May 26, 2020*, i.e.,* two months after the national lockdown – by that time it was too little and too late. The relevant part of the Order dated March 26, 2020 merits reproduction:[4]

> We take suo motu cognizance of problems and miseries of migrant labourers who had been stranded in different parts of the country. The newspaper reports and the media reports have been continuously showing the unfortunate and miserable conditions of migrant labourers walking on-foot and cycles from long distances. They have also been complaining of not being provided food and water by the administration at places where they were stranded or in the way i.e. highways from which they proceeded on-foot, cycles or other modes of transport. In the present situation of lockdown in the entire country, this section of the society needs succor and help by the concerned Governments especially steps need to be taken by the Government of India, State Governments/Union Territories in this difficult situation to extend helping hand to these migrant labourers. This Court has also received several letters and representations from different sections of society highlighting the problem of migrant labourers. The crises of migrant labourers is even continuing today with large sections still stranded on roads, highways, railway stations and State borders. The adequate transport arrangement, food and shelters are immediately to be provided by the Centre and State Governments free of costs. Although the Government of India and the State Governments have taken measures yet there have been inadequacies and certain lapses. We are of the view that effective concentrated efforts are required to redeem the situation…..

As detailed in this survey, the Supreme Court later observed that the responsibility of the States/Union Territories was not only to refer to their policy, the measures contemplated or the funds allocated but to have strict vigilance and supervision as to whether those measures, schemes, benefits reached those to whom they were meant. Holding that it was duty of the States and Union Territories to take care of all the needs of migrant labourers, the court proceeded to issue various directions to them.[5]

3 (2020) 7 SCC 231.

4 *Ibid*.

5 (2020) 7 SCC 181.

Yet the Supreme Court had disposed of *Alakh Alok Srivastava* about a month earlier - on April 27, 2020. Other PILs[6] filed in the Supreme Court seeking some relief or the other for the migrant workers had not met with much success either. Rather, the court had disposed of these PILs even before April 27, 2020.

I have, in previous annual surveys, discussed the reasons for the instrument of PIL having been blunted over the decades, rendering it somewhat ineffective today in protecting the fundamental rights of the marginalized groups and disadvantaged sections of society – for whom the remedial jurisprudence of PIL had been originally conceived. The conclusion in this survey discusses how the current PIL jurisprudence enables the subjective exercise of judicial power by any given Bench in entertaining and dealing with a PIL, while at the same time discourages citizens acting pro bono from taking recourse to PIL to protect the fundamental rights of the poor and disempowered lacking access to courts.

The survey of PIL cases in 2020 unsurprisingly discloses that a large number of the matters were related to issues created by the COVID-19 pandemic. Accordingly, these cases are being clubbed together. The trend reflected by PIL matters on non-COVID-19 issues remained the same as in earlier years – with the focus more on governance issues as distinct from the vindication of the fundamental rights of the disempowered, who because of some disability such as extreme poverty, illiteracy, ignorance and mental illness, are unable to approach the writ courts.

II PIL, COVID-19 AND POLICY MATTERS

In *Centre for Public Interest Litigation* v. *Union of India,*[7] the grievance in the PIL before the Supreme Court *inter-alia* was that though the National Plan under section 11 of Disaster Management Act, 2005 had been framed in November 2019, the said National Plan was neither comprehensive nor covered the management of the pandemic Covid-19, and had no mention of measures like lockdown, containment zones, social distancing and so on so forth.

The PIL sought that the Central Government should prepare a National Plan for Disaster Management specifically for COVID-19 after due consultation with the State Government and experts, and come up with specific COVID-19 guidelines recommending the minimum standards of relief to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation, in absence of which the shelter homes and relief camps were susceptible of becoming hotbeds for the spread of COVID-19 infection. The PIL also sought that the Central Government should come up with detailed guidelines under section 12(ii) and (iii) of the said Act recommending special provisions be made for widows and orphans and ex gratia be provided to the kith and kin of those losing life not just because of Covid-19 infection but also due to harsh lockdown restrictions.

6 *Harsh Mander* v. *Union of India* (2020 SCC OnLine SC 376, W.P. Civil... Diary No. 10801/2020); *Jagdeep S. Chhokar* v. *Union of India* (2020 SCC OnLine SC 435, W.P. Civil... Diary No. 10947/2020); *Mahua Moitra* v. *Union of India* (W.P. (Civil) No. 470/2020)*Swami Agnivesh* v. *Union of India* (W.P. Civil... Diary No. 10802/2020).

7 AIR 2020 SC 5075.

The further plea in the PIL was that the grants/contributions by individuals and institutions should be credited into the National Disaster Response Fund (NDRF) under section 46 of the said Act. The PIL contended that all contributions made by the individuals and institutions in relation to COVID-19 were being credited into the PM CARES Fund and not in the NDRF. The NDRF was subject to CAG Audit while the PM CARES Fund was not. The PIL sought that all finds collected in the PM CARES Fund till date be directed to be transferred to the NDRF and that the Central Government be directed to utilize NDRF to fight against the COVID-19 pandemic.

The Central Government contested the PIL on merits, while also questioning the locus of the petitioner to file the PIL. The contention was that there could not be a permanent body set up only to file litigation on issues which that body subjectively considered to be of "public interest".

The court allowed the request of the government to leave open the question of *locus standi* of the petitioner to be raised and decided in an appropriate proceeding. On merits, the court referred to provisions of the existing National Plan and took the view that "National Plan and guidelines as contemplated by the statute for disaster management is by its very nature prior to the occurrence of any disaster and as a measure of preparedness. It is not conceivable that a National Plan would be framed after the disaster has occurred. A National Plan encompasses and contemplate all kinds of disasters. National Plan, 2019 have already been there in place supplemented by various orders and measures taken by competent authorities under Disaster Management Act, 2005, there is no occasion or need to issue any direction to Union of India to prepare a fresh National Plan for COVID-19."

The court accordingly held that government was not obliged to prepare, notify and implement a fresh National Disaster Management Plan for COVID-19. The court took the view that in light of the existing guidelines issued under section 12 of the said Act providing for minimum standards of relief, the government was not obliged to lay down fresh minimum standards of relief.

On the issue of PM CARES Fund, the court observed that "(a)fter outbreak of pandemic COVID-19, need of having a dedicated national fund with objective of dealing with any kind of emergency or distress situation, like posed by the COVID-19 pandemic, and to provide relief to the affected, a fund was created by constituting a trust with Prime Minister as an *ex-officio* Chairman of PM CARES Fund, with other *ex-officio* and nominated trustees of the fund. The PM CARES Fund consists entirely of voluntary contributions from individuals/organisations and does not get any Budgetary support. No government money is credited in the PM CARES Fund."

Having found that "the PM CARES Fund is a public charitable trust and is not a government fund", the court held that it was "not open for the Petitioner to question the wisdom of trustees to create PM CARES fund which was constituted with an objective to extend assistance in the wake of public health emergency that is pandemic COVID-19." As regards the necessity of CAG audit, the court opined that "(t)he nature of NDRF and PM CARES Fund are entirely different. The guidelines issued under Act, 2005 with regard to NDRF specifically provides for audit of the NDRF by

the Comptroller and Auditor General of India whereas for public charitable trust there is no occasion for audit by the Comptroller & Auditor General of India". The Court declined to direct the transfer of all the funds collected in the PM CARES Fund to the NDRF. The court further held that it was "for the Central Government to take the decision as from which fund what financial measures are to be taken and it is neither for PIL Petitioner to claim that any financial assistance be made from particular fund nor this Court to sit in judgment over the financial decisions of the Central Government." The PIL was accordingly dismissed.

In *M. Munusamy* v. *The Secretary, Union Government of India, New Delhi*,[8] the PIL before the High Court of Madras sought a direction to both the Union and Tamil Nadu Governments to increase the number of private hospitals to provide medical aid to the corona infected patients, instead of confining them in railway carriages that lacked sanitation and infrastructure.

The court found that carriages were to be used only as isolation wards to accommodate mildly and very mildly corona infected persons. Further, the coaches could be easily detached (than a pucca constructed building) for the purpose of isolation in order to maintain social distancing. Moreover, it was very difficult to fumigate structured buildings, whereas it was very easy to fumigate railway coaches which were ambulatory in nature, and the people who were very sick could easily be transferred to higher centres. The court held that the policy decision taken by the government for conversion of coaches could not be blindly interfered with by the court, unless it was perverse or illegal, and that the court could not sit on the administrative side and express its view in respect of conversion of coaches.

Insofar as private hospitals were concerned, the court held that it could not issue a blanket direction to the government to increase the strength of private hospitals to treat corona infected persons. The court observed that the administration of certain private hospitals had already gone into the hands of corporate agents/money mongers and by using the present scenario, they would attempt to mint money, instead of providing proper and good care to patients. The court was of the view that hospitals which had been constructed in violation of sanctioned building plan could seek for regularization on the ground that they have given permission by the government to treat corona patients.

The court was not inclined to accept the suggestion that the private colleges and hostels be converted for accommodating migrant workers and road side dwellers so as to prevent the spread of corona virus. The court opined that after normalcy was restored, parents will be reluctant to permit their children to study in those colleges/ stay in the hostels on the premise that those places had been used for isolating corona affected persons, and, in that event, the privates colleges would incur financial loss that could not be recovered from anyone, much less the government which itself was in severe financial crisis due to unforeseen pandemic outbreak.

8 2020 (3) CTC 848.

On the contention of the petitioner to contend that the decision to confine corona affected persons amounted to violation of liberty guaranteed under article 21 of the Constitution, the court observed "that the COVID Virus does not know any law, much less article 21 of the Constitution of India and it will invariably affect rich and poor, stronger and weaker sections irrespective of caste, creed and religion". After making references to Mahabharata to indicate that good people die on either side of a battle, the Court stated that "human beings cannot wage a battle against Nature and it is the Nature that will always win the war" and that "this Virus will change the entire World Order and survivors of this generation could see the differences between post Corona and Pre Corona impact in all over the World."

The court dismissed the PIL, holding that the PIL appeared to have been filed only with an intent to gain publicity, that it had no public interest, and that it would "reduce the energetic services being rendered by the personnel of various Department". Incidentally, the court stated that the court proceedings had been conducted through Zoom video conference by utilizing the services of private service providers on account of the pandemic outbreak, and that it should not at any cost be videographed and left exposed on the open web. The Court stated that appropriate action would be taken under the penal provisions against persons who did so. The court directed further that no court proceedings were to be telecast without taking prior permission either from the chief justice and the concerned judge/judges.

In *Distress Management Collective* v. *Union of India*,[9] the PIL before the High Court of Delhi *inter-alia* sought provision of medical safety protections to nurses of private hospitals/nursing homes who were called upon to undertake all types of medical care during COVID-19 pandemic; the constitution of a high powered committee to audit/inspect the available stock of medical safety equipment (including PPE kits, gloves, masks, *etc*; and) in private nursing homes/private hospitals in Delhi and NCR; the collection of data of all private hospitals and nursing homes and to come out with details of the nurses and doctors infected and being treated; the extension of the Pradhan Mantri Garib Kalyan Package of insurance protection to cover private sector nurses; the creation of proper psycho-social support and counselling for health care workers and health professionals; and the imparting of proper training to medical and non medical personnel on infection, prevention and control, clinical management including ventilation, logistics and so on so forth.

The court found on facts that most of the reliefs sought in the PIL had been addressed. As regards the extension of the insurance scheme provided under the Pradhan Mantri Garib Kalyan Yojana to other categories of health workers, the court was of the view that this was essentially a policy matter, and that it was for the authorities to consider the same. The court also asked the authorities to consider if a special dedicated helpline could be provided for the ventilation of grievances by nurses and other healthcare workers since the nature of the grievances which they might have (*e.g.,* regarding non-availability of PPE kits at their places of work) would be quite different from the grievances which might be ventilated by the general public,

9 2020 IVAD (Delhi) 206.

and required a different response. The court directed the Directorate General of Health Services ("DGHS") to appoint nodal officer to deal with the complaints of the health workers received by DGHS. The court required circulation of the names and contact numbers of such nodal officer(s) to all healthcare facilities, with the direction that the healthcare workers deployed in the facility be suitably informed. The information was to be duly publicised on the official website of GNCTD and/or DGHS, so that the availability of such redressal mechanism was known to the affected persons. The court accordingly disposed of the PIL.

In *Manmohan Kandwal* v. *State of Uttarakhand,*[10] the PIL before the High Court of Uttarakhand was preferred by three lawyers enrolled with the Bar Council of Uttarakhand, and highlighted the financial problems being faced by lawyers and their registered clerks due to the lockdown declared by the Central Government in view of the COVID-19 pandemic. The contention inter-alia was that since the Bar Council of India and state bar council collect fee from the lawyers at the time of their enrollment and also thereafter, they owe a duty to protect the interest of the advocates. One of the functions of the state bar council and Bar Council of India, as set out in section 6 and section 7 of the Advocates Act, 1961, was to safeguard the rights, privileges and interests of the advocates. For realizing this purpose, the bar councils could constitute one or more funds for giving financial assistance to organize welfare schemes for indigent, disabled or other advocates. Further, Rule 40 of the Bar Council of India Rules also provided for creation of a fund for the welfare of the advocates from the contribution made by them.

The Uttarakhand Bar Council and the Advocate General, on their part, made a statement before the court that all necessary steps would be taken by them to ensure timely financial help to the lawyers worst affected by the lockdown.

The court held that though advocates and their clerks could not be given special treatment during the lockdown, a meeting be convened under the Chairmanship of Advocate General by the Uttarakhand Bar Council, the Uttarakhand Advocates Welfare Fund Trustee Committee (which administered the fund created under Uttar Pradesh Advocates Welfare Fund Act, 1974) and the Bar Council of India member (who was *ex-officio* Chairman of Bar Council of India Advocates Welfare Fund Committee for State of Uttarakhand) for finding a solution to the financial crises caused to young lawyers due to the lockdown. The court directed that in the said meeting, besides other aspects, criteria of eligibility for financial assistance to the advocates as also the amount to be paid to each of the needy advocates as financial assistance would be determined. The court disposed of the PIL while expressing its "hope and trust that the Uttarakhand Bar Council, Uttarakhand Advocates Welfare Fund Trustee Committee and Member of Bar Council of India, who is the Chairman of Bar Council of India Advocate Welfare Fund Committee for the state, will utilize the available resources rationally to ensure that aspirations of all the deserving advocates who are in need of financial help in these difficult times, are fulfilled and claim of no advocate who is in need of financial help, is ignored."

10 AIR 2020 Utr 87.

III PIL, COVID-19 AND ALLEGED ARBITRARY ACTION/INACTION BY THE STATE

In *Praneeth K* v. *University Grants Commission*,[11] the PILs before the Supreme Court challenged the guidelines and directives issued by University Grants Commission, the Ministry of Human Resource Development and the Ministry of Home Affairs whereby all the Universities and Colleges across the country had been directed to conduct terminal semester/final year examinations by September 30, 2020. The PIL further sought a direction to the authorities to declare the results of the students of the final year/terminal semester examinations of all universities/institutions of the country on the basis of their past performance/internal assessment and to award marksheets and degrees.

The PIL pleaded that the decision to conduct the final term/final examinations of universities and institutions throughout the country amid the COVID-19 pandemic was extremely arbitrary, whimsical and detrimental to the health and safety of the students as well as violative of fundamental rights of lakhs of students under articles 14 and 21 of the Constitution The PIL claimed that various other examination boards like CBSE, ICSE, ISC had cancelled their Xth/XIIth Board examination due to the COVID-19 pandemic and had declared the result on the basis of past performance/ internal assessment. On one hand, the UGC had exempted the students of intermediate years/semester from appearing in the examinations due to COVID-19 outbreak and on the other hand, the UGC was forcing the final year students to appear in the examinations, which was discriminatory and arbitrary. The PILs also challenged certain decisions of State Disaster Management Authority taken in exercise of power under Disaster Management Act, 2005.

The court examined the statutory provisions to conclude that the impugned UGC guidelines were not beyond the domain of the UGC and that the same related to coordination and determination of standards in institutions of higher education. The guidelines were issued with the object that an uniform academic calendar be followed by all the Universities and final/terminal examinations be held. As per the Statutory Regulations, 2003, it was the statutory duty of the Universities to adopt the UGC guidelines and these could not be ignored by terming them to be non-statutory or advisory.

The court took the view that the differentiation made in the guidelines to hold final or terminal semester examination and to give option for earlier years/intermediate semester for not holding the examination had a rational basis. The differentiation had nexus with the object to be achieved. Accordingly, the challenge to the guidelines on the ground that there was any discrimination between the students of final year/terminal semester and those of intermediate and first year was rejected. The court found that because one date, *i.e.,* September 30, 2020 had been fixed irrespective of the conditions prevailing in individual States, it could not be said that the guidelines violated article 14 of the Constitution. Rather, the date for completion of examination was fixed throughout the country to maintain uniformity in the academic calendar. The court

11 AIR 2020 SC 5510.

observed that the impugned guidelines and directives showed deep concern of the health of all stakeholders, *i.e.,* students as well as the examination functionaries. Accordingly, the challenge to the guidelines on the ground of the same being violative of article 21 was also repelled.

The court further held that the said Act empowered the State Disaster Management Authority (SDMA) as well as the state government to take measures for prevention and mitigation of a disaster. The court stated that the saving of human life had been given paramount importance under the Act and primacy had been given to the actions and measures taken under the Act over anything inconsistent in any other law for the time being in force. The UGC guidelines, insofar as they required the Universities and Colleges to complete the final year/terminal year examination by September 30, 2020, would be overridden by any contrary decision taken by the SDMA or the State Government exercising power under the Act. However, the state governments or the SDMA had no jurisdiction under the Act to take a decision that the students of final year/terminal students should be promoted on the basis of earlier year's assessment and internal assessment. Hence, the UGC guidelines specifically directing that the final year/terminal semester examination be conducted shall override such contrary decision of the state government or SDMA. The court accordingly disposed of the PILs.

In *National Alliance for People's Movements* v. *The State of Maharashtra*,[12] the grievance in the PIL before the High Court of Bombay related to the working of the High Power Committee (HPC) set up in the state pursuant to the orders of the Supreme Court to ensure maximum possible distancing among the inmates of the correctional homes including the under-trials in wake of COVID-19 pandemic. The Supreme Court had directed that it was for the HPC of each State/Union Territory to determine the category of prisoners who should be released depending upon the nature of offence, the number of years to which he or she had been sentenced or the severity of the offence with which he/she was charged and was facing trial or any other relevant factor which it may consider appropriate. The Supreme Court had clarified that it had not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose was to ensure the State/Union Territories assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

The HPC had classified the undertrial prisoners to be favourably considered for release on interim bail while carving out exempted categories. The PIL pleaded that the HPC had exceeded its jurisdiction and that classification made by the HPC did not satisfy the requirement of article 14 of the Constitution.

The high court noted that the recommendation of the HPC were not fetters on the competent court for considering regular bail applications. The HPC was only considering classes of prisoners who could be released on temporary bail/parole for

12 2020 ALL MR (Cri) 3011.

the purposes of de-congesting the prisons. After examining the various recommendations/directions of the HPC, the directions of the Supreme Court, the nature of offences and the severity of the offences which were contemplated under the Special Acts and the Indian Penal Code, 1860 to be excluded from getting benefit of emergency parole/bail, the court held that the HPC had balanced the rights of the prisoners to maintain maximum possible distancing to contain the spread of COVID-19 as well as the rights of the society. Accordingly, the court, while giving certain clarifications on grant of emergency parole, disposed of the PIL.

In *Shaad Anwar* v. *State of U.P.*,[13] the PIL before the High Court of Allahabad sought the release of the members of Tablighi Jamaat, who were quarantined on returning to Uttar Pradesh after having visited Markaz Nizamuddin, Delhi in the morning on March 5, 2020. The PIL asserted that all the persons so quarantined had completed the period prescribed but the state was not releasing them without any just and valid reason, and that such detention was in violation of fundamental right of such quarantined persons as enshrined under article 21 of the Constitution. The state pleaded that none of the members of the Tablighi Jamaat, who were Indians, were under detention in the quarantine centres in the state and that they all had already been released. The court stated that while it had no reason to disbelieve the statement made by the state, it would be open to the petitioner to ventilate his grievances in accordance with law before the appropriate forum in case he discovered later on that some members of Tablighi Jamaat were still detained in the quarantine centre despite completing the requisite period of quarantine.

The court further noted that due to prevailing outbreak of COVID-19, a large number of persons including migrant workers, were quarantined at different places in the State and were required to be released as soon as quarantine period was over. The court held that as a guardian of the Constitution, it had a duty to interfere whenever there was an abuse of power or usurpation of a right conferred by the Constitution. Detention of persons who had completed their quarantine period and had tested negative could not be further detained in the quarantine centres against their wishes as that would be in violation of personal liberty under article 21 of the Constitution. Accordingly, the court directed the state government to ensure that such persons be released forthwith. The court further directed the Chief Secretary, State of Uttar Pradesh to set up a three members committee in every district to ensure smoother, greater and more effective functioning of the quarantine centres. This committee was not only to supervise the functioning but to see that the quarantine centres were properly maintained, controlled and administered. The committee was also to provide help, assistance and guidance in the wake of difficulties and problems faced by the persons who were quarantined, and further to ensure that the persons who had completed quarantine period were released forthwith provided they had tested negative after completing the quarantine period and there was no legal impediment in releasing them. The PIL was accordingly disposed of.

13 2020 (140) ALR 651.

In *Ananga Kumar Otta* v. *Union of India,*[14] the PIL filed before the High Court of Orissa sought stern action against persons who divulged the identity of individuals infected/affected by corona virus (COVID-19) and further that the appropriate government authorities be directed to frame rules/guidelines and take steps for ameliorating the problems of persons infected/affected by COVID-19 so as to ensure that they are not stigmatized or victimized.

The court referred to case law on the right to privacy and the reasonable restrictions that could be imposed upon such right. The court observed that disclosure of the identity of persons infected with COVID-19 virus and of persons in quarantine did visit them and their family members with trauma, tribulations and also at times led to their ostracisation from society, and that there was indeed a danger to their lives and limbs owing to unjustifiably perceived stigma attached to the disease in the mind of large number of people. The court noted that the State had framed regulations to prevent unauthorized disclosure of the identity of such persons, giving the authorities discretion to disclose the identity of such persons in exceptional circumstances of public health and safety and that that too with the approval of the state government. The court held that no blanket order could be passed prohibiting the State with regard to such disclosure of identity which was in their possession, more particularly when the state was not going to indiscriminately disclose the same, but had reserved the right to disclose the same in the rare and exceptional circumstances mentioned in the regulation. Reiterating that the personal details of the persons provided to the state was an informational privacy protected under the right to privacy implicit in article 21 of the Constitution, the court stated that it hoped and trusted the state to take further steps to keep the personal information masked by applying appropriate method, such as, providing code number for keeping the details in anonymity and keeping utmost confidentiality of such information in different intra-departmental communication.

The court also expressed its hope and trust that the press - both print and electronic media - would behave in a more responsible manner with regard to disclosure of identity and would not disclose the identity of such persons unauthorisedly. The court stated that it had no doubt that the State would also proceed against such persons who were spreading rumours and/or unauthorized information on social media with regard to COVID-19 infected persons (alive or dead) or persons in quarantine. As far as the disclosure of identity of "COVID-19 warriors" were concerned, the court held that since the "COVID-19 warriors" who die while coming in contact with the persons infected in COVID-19 during the discharge of their duties, "there is no impediment on the part of the State Government to disclose their identity as the Government have decided to disclose the same to honour those warriors by extending State Honour in their funeral by the higher officers of the District Administration, such as, District Magistrate and Superintendent of Police concerned and also suitably rehabilitate their dependents, if any, and also compensate them by payment of ex gratia amount and the same is also done with the prior consent of legal representatives of such deceased

14 2020 (II) ILR-CUT 344.

COVID Warrior competent to consent and as the same is going to be done with an avowed object to boost the morale of the other COVID-19 warriors who are fighting to arrest the spread of the pandemic by putting their lives in danger, inasmuch as the same is a message to them that the State is alive to their such sacrifice and adequately take care of their dependents in the event they lay their lives in service of the Nation." The Court accordingly disposed of the PIL.

In *Mahendra Kumar Parida v. State of Odisha,*[15] the PIL before the High Court of Orissa challenged the decision of the state government to consider Aadhar Card as the only proof of identification of the migrant workers and other people in the COVID-19 Odisha State Portal and the offline forms available at gram panchayats or urban local bodies for the purpose of registration. The PIL sought a direction to the State to accept other ID proofs as well, such as Voter ID, Ration Card, MGNREGS ID Card etc. and in absence of any of them, the identification by the Sarpanch of the Gram Panchayat concerned attesting the identity of such migrant labourers.

The state pleaded that, apart from Aadhaar Card, the state government had allowed various other documents to be used for the purpose of registration (both online and offline) of the migrant labourers and others who were entering the State during the lockdown period, and therefore the apprehension of the petitioner was unfounded. These documents included Address Card with photo issued by Department of Posts, Government of India; Arms License; Caste and Domicile Certificate with photo issued by State Government; Certificate of address having Photo issued by MP/MLA/Group-A Gazetted Officer; Certificate of address with photo from Government recognized educational institutions; Certificate of photo identity issued by Village Panchayat head; CGHS/ECHS Card; Current passbook of Post Office/any scheduled bank having photo; Driving License; Election Commission ID Card; Freedom Fighter Card having photo; Income Tax PAN Card; Kissan Passbook having photo; Passport; Pensioner Card having photo; Photo Credit Card; Photo Identify Card (of Central Government/PSU or State Government/PSU only); Photo Identity Card issued by Government recognized educational institutions.

The court disposed of the PIL with a direction to the state authorities and collectors of all the districts of the state to act upon any of the aforementioned documents for the purpose of registration of migrant labourers and other travelling to state during the lockdown period due to COVID-19 pandemic.

In *Ganta Jai Kumar v. State of Telangana*,[16] the PIL before the High Court of Telangana challenged as arbitrary, illegal and without power the action of the State of Telangana and other authorities of not permitting the "private hospitals" and "diagnostic centres" to admit patients for isolation and treatment of Covid-19 virus when such hospitals and centres were equipped with necessary equipment and personnel and willing to conduct diagnostic tests for COVID-19 virus. The PIL sought the consequential direction to the authorities to permit such private hospitals and diagnostic centres to do so.

15 2020 (II) ILR-CUT 15.

16 2020 (4) ALD 356.

The court considered the objection of the state that the PIL did not disclose any public interest, and that it was engineered by vested interests and appeared to be filed as a proxy of private hospitals in the state. The court held that there was public interest in the matter in light of the plea that all citizens should have a right to choose where they could undergo tests and treatment if tested positive for COVID-19, and that the state could not compel them to use only government operated facilities. The petitioner was not espousing a cause personal to him nor was the litigation adversarial. The court found that no material was on record to show that the petitioner was not acting *bona fide* or was a proxy of private hospitals in the state.

On merits, the court found that no legal basis had been given by the state to compel citizens to get tested and treated in only government hospitals, nor were any reasons indicated in the government directives. The court held that it was the basic principle of administrative law that every action of the state which affected the rights of citizens must be supported by reasons so that a court, could, while judicially reviewing it, know that there was application of mind to the issue by the authority concerned. The court further held that the right to health was part of the right to life under article 21 of the Constitution, and that every human being had a basic and natural born instinct to protect himself and his kith and kin from danger - be it from human, animal or one in the nature of a disease - by utilizing all the means available in his power. The state could not incapacitate him by restricting his choice, particularly when it came to a disease which affected his life/health or that of his kith and kin. The court took the view that a restriction on the right of the citizens could only be by a procedure prescribed by "law", and that such "law" must be reasonable, fair and just, and not be arbitrary, whimsical or fanciful. The court held that there was no legal or logical basis for totally excluding private sector participation in either testing or for treatment/isolation of suspects/confirmed COVID-19 patients, though only those private hospitals which had been approved or which would be approved in future by the ICMR could be permitted to provide treatment for COVID-19 patients. Accordingly, the court allowed the PIL, holding that state could not compel residents/citizens of the state to get (a) testing for COVID-19 in NIMS/Gandhi Medical Hospital or only in the other designated laboratories decided by them and (b) to be treated/isolated only in hospitals designated by them, when the citizens/residents were willing to pay the cost and get their blood samples tested in the private ICMR approved laboratories or private sector hospitals having the requisite infrastructure by paying the requisite charges. The court held that it would be the right of the citizens and residents of the state to get tested and treated on payment basis, if they choose to do so, for COVID-19 in any private laboratory presently approved by the ICMR or which might be approved in future at such rates as may be determined by ICMR or any other competent authority of the Union of India.

In *Vineet Ruia* v. *The Principal Secretary, Ministry of Health & Family Welfare*,[17] the PIL before the High Court of Calcutta raised four grievances, namely (i) the human remains/dead bodies of persons inflicted with COVID-19 were being disposed of by

17 AIR 2020 Cal 308.

the administration unceremoniously and in an undignified manner without showing even a semblance of respect to the mortal remains (ii) relatives and friends of persons admitted to hospitals with COVID-19, or persons who had contracted the disease whilst in hospitals having been admitted for some other malady and who subsequently passed away, were not being permitted to have a last look at or to pay last respect to the mortal remains of the dead person and to perform the last rites (iii) There was no proper reporting of COVID-19 cases or COVID-19 deaths and (iv) district wise lists were not being published containing names of all persons infected with COVID-19.

The court considered the reports submitted by the state on these four grievances and expressed its satisfaction on the steps taken in respect of the third and fourth grievances. As regards the first grievance, the court took the view that the right to live a dignified life extended up to the point of death, including the dignified procedure of death, and that the phrase 'dignified procedure of death' included dignified disposal of the human remains of a deceased. The court held that the mortal remains of a deceased person must be treated with care, respect and dignity and had to be disposed of by burial or burning, according to the religion, insofar as the same was ascertainable, that the deceased person had practised. The right to a decent funeral also could be traced to article 25 of the Constitution. It made no difference whether or not the deceased person was infected with COVID-19. The court observed that all requisite safety and precautionary measures would, however, have to be taken by the persons who carry out the funeral. As regards the second grievance, the court held that the family members should not only be permitted to have the last look at or to pay last respect to the mortal remains of the dead person, but also to perform the last rites of the deceased notwithstanding that the deceased was infected with COVID-19. The court held that the right of the family of a COVID-19 victim to perform the last rites before the cremation/burial of the deceased person was a right akin to fundamental right within the meaning of article 21 of the Constitution. The court, after examining the guidelines on dead body management in the context of COVID-19 issued by the Ministry of Health and Family Welfare, Government of India and the procedure laid down in the state government notification, laid down additional guidelines as under:

> i) When post mortem of the dead body is not required, the dead body shall be handed over to the immediate next of kin of the deceased i.e. the parents/surviving spouse/children; which shall be not more than six persons; after completion of hospital formalities, for being taken to the burial ground/crematorium directly. The body should be secured in a body bag, the face end of which should be transparent and the exterior of which will be appropriately sanitized/decontaminated so as to eliminate/minimize the risk to the people transporting the dead body.
>
> ii) The people handling the dead body shall take standard precautions, e.g., surgical mask, gloves, etc. If available and possible, PPE should be used.
>
> iii) The vehicle carrying the dead body to the crematorium/burial ground will be suitably decontaminated.

> iv) The staff of the crematorium/burial ground should be sensitized that COVID-19 does not pose additional risk. They will practice standard precautions.
>
> v) The face end of the body bag may be unzipped by the staff at the crematorium/burial ground to allow the relatives to see the body for one last time. At this time, religious rituals, such as reading from religious scripts, sprinkling holy water, offering grains and such other last rites that do not require touching of the body, should be allowed.
>
> vi) After the cremation/burial the family members and the staff of the crematorium/burial ground should appropriately sanitize themselves.
>
> vii) As a social distancing measure, large gathering at the crematorium/ burial ground should be avoided.
>
> viii) The persons handling the dead body shall go directly from the hospitals to the crematorium/burial ground as may be indicated by the State/LSGI officials, as the case may be, and not to anywhere else including the home of the deceased where he/she last resided.
>
> ix) In case the body of a COVID-19 infected deceased is unclaimed, the same shall be cremated/buried as the case may be with due dignity, at State expense."

In *J.HillsonAngam* v. *The State of Manipur*,[18] the grievance in the PIL before the High Court of Manipur pertained to the lack of facilities in the quarantine centres in the state to house the students, migrant workers and others who had returned to the state in view of the COVID-19 pandemic. The PIL sought directions to the state to call for records with regards to quarantine facilities and to monitor the development on a weekly basis; to set up adequate and proper quarantine centre in all the districts of Manipur to accommodate the returnees; to follow the recommendation issued by World Health Organization and National Centre for Disease Control for implementing quarantine; to provide doctor visits daily to all the quarantine centre, including the community/village quarantine centre; to ensure that the quarantine facility provided clean and a hygienic environment by sanitizing and disinfecting the premises on a daily basis; to appoint a sanitation worker in each ward to sanitize and disinfect the toilets and rooms surfaces touched frequently at least once a day; to provide clean bed sheets, towels and hot water daily to the patients in their rooms; to appoint an attendant in each ward to assist the inmates in getting essential items like food, soap, sanitizers, bed linen, *etc.*; to appoint a counselor at the quarantine facilities to provide psychological support and remove psychological fear and panic amongst all quarantined people and healthcare professionals/staffs including doctors, nurses, sanitation workers and security personnel; and to improve the quality of food served to the inmates at the quarantine facilities.

The court found merit in the grievance that there were no sufficient quarantine centres in the districts to accommodate all the returnees and that the facilities provided

18 2020 (5) GLT 264.

in the existing quarantine centres in relation to health, infrastructure, food *etc*., were not upto the mark in terms of the guidelines/SOPs issued by the WHO and the National Centre for Disease Control. The court noted that no state level committee consisting of experts appeared to have been constituted by the state government nor had the state government framed the exhaustive rules and regulations to deal with COVID-19 crisis. The court issued directions to the state government to *inter-alia* constitute a committee consisting of experts to collect all the relevant data, discuss with the stakeholders, analyze the detailed aspects and submit reports to the state government from time to time so that the same could be placed before the high level consultative committee headed by the Chief Minister, Manipur for consideration and appropriate decisions. The court directed the state government to constitute such expert committee in all major departments as well. The state government was directed to share all information with the general public without any discrimination, unless exempted under the provisions of section 8 of the Right to Information Act, 2005, that related to actions taken by it towards combating COVID-19 crisis, including the utilization of public money, infrastructure, manpower, facilities *etc*., in the quarantine centres. The state government was directed to frame exhaustive rules and regulations to regulate the functioning of the state government towards combating COVID-19 pandemic or to suitably modify the existing SOP, depending upon the change of circumstances touching on all aspects of the matter and keeping in mind the shortcomings, difficulties, drawbacks, complaints from the public *etc*., faced by the state government in the recent past. The PIL was accordingly disposed of.

In *Aashray Abhiyan* v. *State of Bihar*,[19] the PIL before the High Court of Patna by a registered organization claimed that one hundred families residing in the specified slum area since the last 20 years were apprehending threat of dispossession during the COVID-19 pandemic, without the government having any rehabilitation scheme under Bihar State Slum Policy, 2011 and Affordable Housing and Slum Rehabilitation and Redevelopment Housing Policy, 2017. The PIL *inter-alia* sought restraint from demolition of the slum, the submission of a status report on provision of alternative arrangement of providing affordable housing, the formulation of a proper slum rehabilitation plan and the grant of immediate relief to the residents of the said area with the provision of food packets, potable water, temporary toilets, power supply, education, livelihood, primary health centres, proper health checkup facilities including antenatal care to pregnant women, postnatal care to lactating mothers, immunization, Anganwadi centre to provide nutrition and other services as per the ICDS scheme before any physical eviction was carried out.

The state contended that the entire area was under development, that the old government buildings stood demolished and that it was after demolition that certain people had occupied part of the area recently. Moreover, as per the Building Construction Department, that the Department had no plan to displace anybody for the present during the COVID-19 pandemic.

19 2020 (2) PLJR 748.

The court noted that the PIL had been preferred without naming the persons who were said to apprehend ejectment or without naming the officials of Building Construction Department who had contacted the slum dwellers. The pleadings suggested that neither the affected persons nor the petitioner had made any representation before the concerned authorities ventilating their grievances. Moreover, there was factual dispute with regard to the period since which the affected persons were residing in the area in question. Considering the rival submissions of the parties, particularly, the stand of the state that the Building Construction Department had no plan to displace any person during the COVID-19 pandemic, the court disposed of the PIL with a liberty to the petitioner or the actual affected persons, if so advised, to represent before the concerned authorities for redressal of their grievance, if any.

In *Jacob George* v. *The Secretary, Department of Information and Broadcasting*,[20] the PIL before the High Court of Karnataka sought grant of compensation of Rs. 50,00,000/- to the families of media persons and newspaper delivery agents affected due to corona virus infection; the conducting of compulsory health check ups of all the media persons to identify any of the suspected case of corona virus and the encouragement to work from home instead of working from offices of media houses; and the provision of safety kits, masks, gloves and personal protection equipment to the media persons who visit hospitals, quarantine centres and containment zones.

The PIL pleaded that media should also be considered as an essential service as the media was providing vital information to the people about the policies and directions of the government and creating awareness amongst them with regard to the programmes and schemes initiated by the Union and state governments for the benefit of the people. Media personnel had no social security benefit in the event of an unfortunate death while in the line of duty as their families were not paid any compensation, either from the managements under whom they worked or from the state or central governments. The petitioner pleaded that he had submitted a representation on May 5, 2020 and that directions be issued to the authorities to consider the same.

The court, while highlighting the role of the media in Indian democracy, referred to the case law on free speech and observed that the role of journalists and media personnel could not be underestimated nor undermined during the COVID-19 pandemic and that, just like the police, doctors, nurses and government personnel and others who were carrying out essential duties, the journalists and other media personnel were on the field so as to disseminate and convey correct information to the citizens of the country about the impact of the pandemic and also other information from the world over.

The court considered the objection of the state, amongst others, that the PIL had been filed on May 6, 2020, within 24 hours of the representation made on May 5, 2020 *i.e.,* even before the same could have been looked into. The court disposed of

20 2020 (3) AKR 468.

the PIL with a direction to the authorities to consider the representations made by the petitioner in accordance with law within a period of two months.

IV PIL, COVID-19 AND FREEDOM OF RELIGION

In *Mohammad Ayub* v. *State of U.P.*,[21] the PIL before the High Court of Allahabad sought the relaxation of state government guidelines that contemplated a lockdown on every Saturday and Sunday in view of COVID-19 pandemic, so that Qurbani could be done on the festival of *Eid-ul-Adha* falling on a Saturday.

The court observed that the fundamental rights under Part III of the Constitution were not of an absolute nature but were subject to reasonable restrictions. The right to freedom of religion guaranteed under article 25 of the Constitution did not override the interests of public order, morality and health and were also subject to other provisions contained under Part III. The court found that the petitioner, a surgeon, could not establish in what manner the restrictions imposed in terms of the guidelines issued by the state government in the light of the prevailing COVID-19 pandemic impinged upon any of the fundamental rights of the petitioner or of any person, more so when the unprecedented times of COVID-19 pandemic had cast an onerous obligation upon the state to take measures to secure the health and lives of its citizens. The court, accordingly, held that the state guidelines during the extraordinary situation created due to COVID-19 pandemic, could not be said to impinge upon any of the fundamental rights of the petitioner or members of any religious community. The court, therefore, dismissed the PIL.

In *Roshan Khan* v. *State of U.P.*,[22] the PIL before the High Court of Allahabad challenged the government orders providing for a complete ban in taking out the Moharram processions. The court examined the government orders issued to contain the spread of COVID-19, and found the state government had imposed a complete prohibition on all religion activities across communities that might involve a large conglomeration of people, and as such the government orders were not discriminatory nor did they target any community in particular. The court held that although the complete prohibition of practices which were essential to religion was an extraordinary measure, it was proportionate to the unprecedented situation faced due to the pandemic. Holding that the right to practise and propagate religion was subject to public order, morality and health under the Constitution, the court dismissed the PIL.

In *Afzal Ansari* v. *State of U.P.*,[23] the PIL before the High Court of Allahabad stated that the month of Ramzan was being observed throughout the country from April 25, 2020, and that in this month the entire Muslim community all over the world observed fasting approximately from sunrise to sunset. The timing of the beginning and the conclusion of the daily fast was marked by the sound of the Azan. The PIL pleaded that the practice of opening the fast by the sound of the Azan was an Islamic tradition prevailing since the time of Prophet and has been followed for the

21 2020 (142) ALR 86.

22 AIR 2020 All 223.

23 2020 (4) ADJ 524.

past 1400 years. The PIL sought that the Muslims in the Districts Ghazipur and Farrukhabad be permitted to recite Azan through "Muezzin" by using sound amplifying devices, and challenged the restrictions imposed thereupon by the administration as wholly arbitrary and unconstitutional. The PIL stated that the pronouncement of Azan was not a congressional practice but simply an act of recitation by a single individual, calling the believer to offer Namaz at their homes and therefore did not violate any of the conditions of the prevailing lockdown. Moreover, there was no congressional prayer being conducted in any of the Mosques in District Ghazipur during the lockdown. The PIL pleaded that the ban on Azan through sound amplifying devices was violative of fundamental right as provided under article 25 of the Constitution, since Azan was an essential religious practice, for the welfare of a religious community and did not contradict public order, morality, health or any other provisions of Part III of the Constitution, and therefore, could not be prohibited or restricted by the administration.

The court held that Azan by voice without the use of sound amplifying devices was certainly an essential and integral part of Islam and was protected under article 25 of the Constitution. The court was of the view that it could not be said that the religious teachers or the spiritual leaders who had laid down these tenets, had any way desired the use of microphones as a means of performance of religion. While one could practise, profess and propagate religion, as guaranteed under article 25(1) of the Constitution, the provisions of article 25 were subject to article 19(1)(a) of the Constitution. The court held that on true and proper construction of the provisions of article 25(1), read with article 19(1)(a) of the Constitution, the citizen could not be coerced to hear anything which he did not like or which he did not require. The right to live in freedom from noise pollution was a fundamental right protected by article 21 of the Constitution of India. Noise pollution beyond permissible limit was hazardous which violated the fundamental rights of citizens. Hence, the recitation of Azan through loudspeakers or other sound amplifying devices was not an integral part of the religion, warranting protection under article 25 of the Constitution which was even otherwise subject to public order, morality or health and to other provisions of Part III of the Constitution. Rather, the restriction on the use of sound amplifying devices was subject to the Noise Pollution Rules, 2000.

The court further held that the recital of Azan by a single person in the Mosque *i.e.,* Muezzin/Imaam or any other authorised person, through human voice without using any amplifying device, asking Muslims to offer prayers and that too without inviting them to the Mosque, was not violative of any COVID-19 guidelines. Mere recital of Azan from the Mosque through human voice did not cause any health hazards to any person of the society. The court accordingly disposed of the PIL holding that Azan could be recited by Muezzin from minarets of the Mosques by human voice without using any amplifying device, and directing the administration not to cause hindrance to the same on the pretext of the guidelines to contain the COVID-19 pandemic.

In *Mubeen Farooqi* v. *State of Punjab,*[24] the PIL before the High Court of Punjab and Haryana was filed by an advocate who was also the President of Muslim Federation of Punjab, Malerkotla. The PIL sought that the opening of all places of worship during the COVID-19 pandemic since shops and markets had been permitted to be open with social distancing guidelines issued in conformity with Disaster Management Act, 2005.The PIL stated that Ramadan was the most sacred month of the year in Islamic culture and that the Mosque/Idgah be opened to offer prayer during Ramadan for a period that could be restricted to one hour for offering Jamaat/Namaz of *Eid-Ul-Fitr* and Dua.

The court referred to the case law to draw out the distinction between matters of religion and those of secular administration of religious properties, and for the proposition that a Mosque was not an essential part of the practice of the religion of Islam. The court held that the opening of religious places and holding of religious congregations could not be ordered to be relaxed on the analogy of the opening of business establishments. Nor was the imposition of restrictions repugnant to article 25 of the Constitution which, while guaranteeing freedom of conscience and right to profess, practice and propagate religion to every person, was made subject to restrictions imposed by the state *inter-alia* on the ground of public order, morality and health. The court observed that it was in order to safeguard the health of society that restrictions had been imposed by closing down all the places of worship for public, including the holding of religious congregations/gatherings, and that the restrictions imposed were reasonable based on objectivity. Such restrictions were imposed qua religious places of all religions, and did not amount to interference in the religious affairs of any particular community The restrictions did not violate any fundamental or legal right of the petitioner or the similarly situated persons. Moreover, the closure of religious places of worship during the period of spread of corona virus (that too, as a temporary measure) was a regulation and not a prohibition. The imposition of such restrictions was a public policy matter in which the scope of judicial interference was very limited and could be warranted only if the public policy was unconstitutional, arbitrary or irrational. Stating that it would not substitute its wisdom for the wisdom of the executive decision taken in the larger public interest, the court dismissed the PIL.

In *Nishikant Dubey* v. *Union of India*,[25] the PIL before the High Court of Jharkhand sought a writ of *mandamus* directing the State of Jharkhand to allow the reopening of the Baba Baidhyanath Jyotirlinga Temple at Deoghar and Baba Basukinath Temple at Basukinath. The PIL further sought that the Shravani Mela be held and devotees be allowed to offer prayer during month of Shravan and Bhado, with such precaution and at such scale as the authorities may deem fit and proper keeping in view the outbreak of COVID-19 pandemic. The court, after hearing the Principal Secretary, State Disaster Management, declined to issue any such direction holding that in light of the nature of COVID-19 pandemic, the decision of the state government

24 (2020) 200 PLR 45.

25 2020 (4) J.L.J.R. 604.

could not be said to be improper and that it would not be appropriate for the court to interfere with such policy decision which was not shown to be without jurisdiction.

The court did examine various proposals to allow limited gatherings but opined that it would not be feasible to do so due to the threat of the spread of the virus. The court clarified though that the Pooja of Jyotirlinga would continue during the month of Shravan and Bhado but the same would be done by the Temple Trust without allowing any public participation. The State eventually gave the proposal that it would make arrangement for online Darshan during the entire course of Shravani Mela. The court accordingly disposed of the PIL with a direction to the State to make arrangement for online Darshan of the Lord Shiva during Shravani Mela, to be started from the opening day and to continue till the last day of the Mela.

In *Surendra Panigrahi* v. *State of Odisha,*[26] first PIL before the High Court of Orissa sought that the Temple Managing Committee of Lord Shree Jagannath, Puri, the State Government and other authorities be directed to postpone the Car Festival/ Rath Yatra at Puri due to COVID-19 pandemic corona virus, while the second PIL sought that Car Festival/Rath Yatra be allowed to be held by strictly adhering to the conditions imposed in the guidelines issued by the Government of India, Ministry of Home Affairs, New Delhi as well by the order issued by the state government on maintaining social distancing and wearing masks. The PIL further sought that the Chariots/Car of Lords may be allowed to be pulled only by heavy duty machines, instead of by manpower.

The court referred to the various COVID-19 guidelines and noted that state government had yet to take a decision on the question of holding of Rath Yatra. The court observed that the state government was fully cognizant of the deteriorating situation about the spread of corona virus in the state and had stated that it was constantly monitoring such situation and would take a decision with regard to holding or otherwise, of the Rath Yatra on an objective evaluation of the ground situation at an appropriate time keeping in view safety, security and welfare of the state. The court accordingly held that it was up to the state government to decide whether or not to allow the Rath Yatra depending on the situation then prevalent on the ground with respect to the spread of corona virus. The court directed that if however any decision was eventually taken to allow the Rath Yatra, the state government would ensure strict adherence to the COVID-19 directives issued by the Government of India and the state government. As regards the prayer that the Chariots/Car should be allowed to be pulled manually or mechanically, the court observed that instead of using manpower, the deployment of heavy duty machines or any other means like elephants for pulling the Chariots/Rath would obviously obviate the necessity of involving large number of persons. The court directed that this aspect should be duly considered by the state government while taking a decision on holding Rath Yatra, consistent with the guidelines issued by the Central Government and the state government. The PILs were accordingly disposed of.

26 2020 (II) ILR-CUT 176.

In *Qualified Private Medical Practitioners Association* v. *Union of India*,[27]the grievance in the PIL filed by a registered organisation of medical doctors and dentists before the High Court of Kerala was that there was an unhealthy practice of administering holy sacrament commemorating the last supper of Jesus Christ by distributing bread and wine in Christian churches, which posed serious health hazards to the general public, especially the communicants. According to the PIL, the practice followed in majority of the Christian churches in India in respect of holy sacrament was that the priests served wine from a single chalice using the same spoon into the mouth of every communicants. Pieces of bread were also served into the mouth of the communicant by the priests with their own hand. There was no cleaning of the spoon or the hand while serving each communicant, giving rise to a very high possibility of saliva contamination - a major cause of dissemination of many diseases that could even spread through saliva droplets in the air and infect a large mass of people. The PIL sought that the authorities be directed to ensure that hygienic practices were followed in all religious institutions including churches where food was distributed, and that such distribution was only of safe food within the meaning of Food Safety and Standards Act, 2006.

The court noted that the said Act was promulgated to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, and to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The Food Safety Authority was not vested with any powers to interfere with the distribution or administration of holy sacrament in churches.

The court observed that it was not a compulsory practice to administer the holy sacrament to commemorate the last supper of Jesus Christ, but it was a matter of was a faith followed by the Christians, who were the disciples of Jesus Christ. The holy sacrament was not a food consumed by the believer to satisfy the hunger, but was received by a believer out of faith and it had its own religious and spiritual significance and importance. Further, the freedom of conscience and free profession, practice and propagation of religion, and freedom to manage religious affairs granted under articles 25 and 26 of the Constitution were absolute, but for the restrictions contained there under *i.e*., public order, morality and health.

The court held that the practice of administering the holy sacrament was a religious practice and an essential and integral part of the religion. The court stated that "the receipt of the holy sacrament by the Christians is a matter of absolute faith and belief of the Christians, and unless and until it is established that the act of administration of holy sacrament has interfered with the public order, morality and health, interference under article 226 is next to impossibility". The court recorded that the petitioner had not made out any specific instance where due to the administration of holy sacrament by the priests in the churches, any communicable diseases or health hazards had been caused to any of the recipients of the holy

27 AIR 2020 Ker 87.

sacrament. The court observed that if at all any changes were to be made in the practice, beliefs and faith, it was to be done by the Church authorities themselves, and it was not for the court of law to interfere with the centuries old practice, faith, custom and belief followed by the Christian communities.

The court further held that members of the Christian community were entitled to enjoy the fundamental rights guaranteed under articles 19(1)(a) and 21 of the Constitution, subject to the restrictions contained under articles 25 and 26. The court took the view that the term 'expression' in article 19(1)(a) of the Constitution was to be widely construed to include the citizen's freedom to follow the culture, practice, faith and conventions followed by a religious denomination. Similarly, the practice of receiving the holy sacrament by members of the religious denomination in a manner followed in the community was the personal liberty of the members and well protected under article 21 of the Constitution. Stating that the petitioner did not bring to its notice any law that was being violated by churches in this regard and that the court was unable to find any arbitrariness, illegality or other legal infirmities justifying interference under article 226 of the Constitution, the court dismissed the PIL.

V SUO MOTO PIL

In Re: Problems and Miseries of Migrant Labourers[28] was a *suo moto* PIL by the Supreme Court which referred to the various remedial measures said to have been taken in wake of COVID-19 pandemic by states and Union Territories, the orders and guidelines issued by the Central Government, the orders issued by the National Executive Committee under the Disaster Management Act, 2005, and the policies and decisions taken by the concerned states. The court observed that there could be no exception to the policies and intentions of the state but what was important was that those on whom implementation of circulars, policies and schemes was entrusted were efficiently and correctly implementing those schemes. The court noted that lapses and short-comings in implementing the schemes and policies had been highlighted by various intervenors in their applications and affidavits. The responsibility of the states/Union Territories was not only to refer to their policy, the measures contemplated or the funds allocated but to have strict vigilance and supervision as to whether those measures, schemes, benefits reached those to whom they were meant. The court impressed upon the states and Union Territories to streamline the vigilance and supervision of actions of their officers and staff and to take appropriate action where required. The court further noticed from the materials on record that there were some instances of excess with regard to migrant labourers. The court observed that the migrant labourers were forced to proceed to their native place after cessation of their employment and were already suffering, and that the migrant labourers had to dealt by the police and other authorities in a humane manner in regard of which the concerned Director General of Police/Police Commissioner may issue necessary directions.

The court further noted that non-governmental organisations and individuals had contributed and played an important role in extending helping hand to the migrants

28 (2020) 7 SCC 181.

by providing food, water and transportation at their cost. Stating that it was the responsibility and duty of the states and Union Territories to take care of all the needs of migrant labourers, the court proceeded to issue various directions to them. All the states/Union Territories were directed to take all necessary steps regarding identification of stranded migrant workers in their state who were willing to return to their native places and to take steps for their return journey by train/bus which process may be completed within a period of 15 days. The Central Government could give details of all schemes which might be availed by migrant workers who had returned to their native places. All states and Union Territories were directed to also give details of the current schemes in the state, including different schemes for providing employment, the benefit of which could be taken by the migrant labourers. The State was directed to establish counselling centres, helpdesks at block and district levels to provide all necessary information regarding schemes of the government and to extend a helping hand to migrant labourers to identify avenues of employment and benefits which could be availed by them under the different schemes. The details of all migrant labourers, who had reached their native places, was directed to be maintained with specifics of their skill, nature of employment and earlier place of employment. The list of migrant labourers was to be maintained village-wise, block-wise and district-wise to facilitate the administration to extend the benefit of different schemes which might be applicable to such migrant workers. The counselling centres so established were directed to also provide necessary information by extending a helping hand to those migrant workers who had returned to their native places and who wanted to return to their places of employment. All concerned States/Union Territories were directed to consider withdrawal of prosecution/complaints under section 51 of Disaster Management Act, 2005 and other related offences lodged against the migrant labourers who had allegedly violated the lockdown measures by moving on roads during the lockdown period enforced under the said Act.

In Re Banners Placed On Road Side in The City of Lucknow v. *State of U.P.*[29] was a *suo moto* PIL initiated by the High Court of Allahabad of regarding the legitimacy of the display of photographs, name and address of certain persons by the district administration and police administration of the city of Lucknow through banners. The banners had come up at a major roadside with personal details of more than 50 persons accused of vandalism during protest in December, 2019. The poster had sought compensation from the accused persons, and the confiscation of their property if they failed to pay compensation.

The court examined and rejected several objections raised by the State as to the *suo moto* PIL. The court noted that though the judiciary usually took action once a case or cause was brought before it by a party, but "where there is gross negligence on part of public authorities and government, where the law is disobeyed and the public is put to suffering and where the precious values of the constitution are subjected to injuries, a constitutional court can very well take notice of that at its own. The court in such matters is not required to wait necessarily for a person to come before it to

29 2020 (5) ALJ 609.

ring the bell of justice. The courts are meant to impart justice and no court can shut its eyes if a public unjust is happening just before it."

The court held that the prime consideration before it was to prevent the assault on fundamental rights, especially the rights protected under article 21 of the Constitution. The court rejected the contentions relating to lack of its territorial jurisdiction to take cognizance in Allahabad for the "cause" that arose in Lucknow, taking the view that "the cause is not about personal injury caused to the persons whose personal details are given in the banner but the injury caused to the precious constitutional value and its shameless depiction by the administration. The cause as such is undemocratic functioning of government agencies which are supposed to treat all members of public with respect and courtesy and at all time should behave in manner that upholds constitutional and democratic values.". Similarly, the court rejected the plea that the state had acted *bona fide* in displaying personal details of the individuals inasmuch as the same, in the view of the state, was to deter the mischief mongers from causing damage to public and private property. The court held that while the State could always take necessary steps to ensure maintenance of law and order but that could not be by violating the fundamental rights of people. The court held that the state action was an unwarranted interference in privacy of people and hence in violation of article 21 of the Constitution.

The court accordingly directed the District Magistrate, Lucknow and the Commissioner of Police, Lucknow Commissionerate, Lucknow to remove the banners from the road side forthwith and to desist from placing such banners on road side containing personal data of individuals without having authority of law. Interesting, the court sought a "report of satisfactory compliance is required to be submitted by the District Magistrate, Lucknow", upon the receipt of which, the proceedings in the PIL would stand closed.

VI PIL AND ADMINISTRATION OF JUSTICE

In *District Bar Association, Dehradun* v. *Ishwar Shandilya,*[30] the Supreme Court considered the challenge to the decision of the High Court of Uttarakhand pronounced in the PIL whereby the District Bar Associations of Dehradun, Haridwar and Udham Singh Nagar had been directed to forthwith withdraw their call for a strike and to start attending the courts on all working Saturdays. The high court had further required all the District Bar Associations in the State to forthwith refrain from abstaining from courts on account of condolence references for family members of advocates or other reasons. The high court had directed that in the event of non compliance, the district judges concerned would submit their respective reports to the high court for it to consider whether action should be initiated against the errant advocates under the Contempt of Courts Act, 1971. The high court had also issued directions to the Bar Council of India to take action against the recalcitrant Bar Associations pursuant to its show-cause notice and to ensure that these Bar Associations desist from continuing such strikes/boycott of courts. The Uttarakhand State Bar Council was directed to initiate disciplinary action against the office bearers of the aforesaid District Bar

30 AIR 2020 SC 1412.

Associations for their having given a call for illegal strikes/boycott of courts on Saturdays in Dehradun, Haridwar and Udham Singh Nagar. The district judges of these districts were directed to ensure that courts function on Saturdays, and sufficient cases were listed and disposed of by courts on all working Saturdays. The Commissioner of Police/Senior Superintendent of Police, of the concerned districts, was directed to forthwith provide necessary police protection to ensure smooth functioning of courts as and when requested by the district judge or a judicial officer, regarding the possibility of court proceedings being impeded because of strike/boycott of courts by advocates.

The Supreme Court, referring to the fundamental right to speedy trial read in article 21 of the Constitution in its decision in *Hussainara Khatoon* v. *State of Bihar,*[31] held that strike by lawyers lowered the image of the courts in the eyes of the general public and resulted in denial of speedy trial to the citizens. As regards the plea that "to go on strike/boycott courts is a fundamental right of Freedom of Speech and Expression Under article 19(1)(a) of the Constitution and it is a mode of peaceful representation to express the grievances by the lawyers' community is concerned", the court held that "such a right to freedom of speech cannot be exercised at the cost of the litigants and/or at the cost of the Justice Delivery System as a whole. To go on strike/boycott courts cannot be justified under the guise of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. Nobody has the right to go on strike/boycott courts. Even, such a right, if any, cannot affect the rights of others and more particularly, the right of Speedy Justice guaranteed Under Articles 14 and 21 of the Constitution."

The Supreme Court, while referring to the case law on the question of lawyers having no right to give a call for strike or to go on strike or to abstain from appearing before the court pursuant to a call for strike or boycott, stated that it was "of the firm opinion that the High Court is absolutely justified in issuing such directions". The court referred to the case law for the proposition that it was the duty of the Bar Councils to ensure that there was no unprofessional and/or unbecoming conduct, that no Bar Council could even consider giving a call for strike or a call for boycott; and that in case any Association called for a strike or a call for boycott, then the state bar council concerned (and on their failure the Bar Council of India) must immediately take disciplinary action against the advocates who gave a call for strike and, if the committee members permitted the calling of a meeting for such purpose, against the committee members. The court was of the view that it was the duty of every advocate to boldly ignore a call for strike or boycott. The court held that even if the bar councils did not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, the court could and would do so on an appeal.

The Supreme Court directed all concerned, including the district bar associations, to comply with the directions issued by the high court in their true spirit, and stated that in the event of breach, a serious view shall be taken and the consequences shall

31 AIR 1979 SC 1360.

follow, including the punishment under the Contempt of Courts Act. Having done so, the Supreme Court observed that notwithstanding the case law and "despite the warnings by the courts time and again, still, in some of the courts, the lawyers go on strikes/are on strikes. It appears that despite the strong words used by this Court in the aforesaid decisions, criticizing the conduct on the part of the lawyers to go on strikes, it appears that the message has not reached". The court took "suo moto cognizance" and issued "notices to the Bar Council of India and all the State Bar Councils to suggest the further course of action and to give concrete suggestions to deal with the problem of strikes/abstaining the work by the lawyers."

In *Dinesh* v. *The High Court of Judicature*,[32] the PIL filed by a practicing advocate of the Patna High Court brought to the notice of that High Court that on evening of the November 15, 2017, Republic T.V. a private news channel, broadcast a news item titled "Cash for Justice". The news programme ran sought to present videographic evidence (secretly recorded by the news channel) of alleged rampant corruption by way of bribery in the district court, Patna. The staff in the Record Room and the Certified Copy Delivery Section as also the court staff of the District Judge, Patna were said to be caught on videotape not just demanding bribes but actually robbing the litigants, lawyers' clerk and lawyers. The sting videography also supposedly showed certain lawyers compromising their professional integrity by encouraging others to pay. It was alleged that the court staff of a particular judge, apparently in collusion with the judge, were caught on videotape demanding and accepting bribe money from the Munshis and prisoners. The court staff were stated to be seen asking for money at different rates for being sent to different jails - Beur jail for a higher price and Phulwari Sharif jail for a lower price. The PIL claimed that this amounted to sale of judicial orders as the order was dictated and signed by the judge. The PIL alleged that the State did nothing except suspend 16 employees of the court. The PIL sought the lodging of a FIR against all the judicial and non-judicial staff of District Court of Patna whose indulgence in bribery and corrupt behavior had been exposed by the Republic TV sting operation conducted and broadcast in November 2017; a time-bound investigation under the supervision of the high court into the entirety of criminal conduct shown in the Republic TV sting; and a direction to the authorities to explain the reasons for the inordinate delay in loading a criminal case (a FIR) against the officers/staff exposed in the string and also the delay in taking adequate disciplinary action against these officers and employees. In a supplementary affidavit, the petitioner referred to yet another sting operation carried out in District Court of Patna by the news channel, Aaj Tak.

The court considered the objections to the PIL on *locus standi* and maintainability and that the case had been brought unnecessarily tarnishing the image of judiciary and that it is not a public interest litigation rather is a publicity interest litigation. The court did not accept these objections. The court relied on the case law on *locus standi* in PIL matters and for the proposition that wherever a public interest was invoked, the court must examine the petition carefully to ensure that there was genuine public

32 2020 (1) PLJR 671.

interest involved and that the petitioner must act *bona fide*. The court took the view that the petitioner had *locus standi* to file the PIL as he was an advocate of the court and he had every right and duty to protect the institution, that too, from corruption. The high court discussed the social evil of corruption and stated that the "fountain of justice cannot be allowed to be polluted and it is the duty of the Court to take hard decision to eradicate this disease..". The court held that "entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System…. The court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice."

Referring to articles 32 and 226 of the Constitution, the court held that the "very plenitude of the power under the said Articles requires great caution and restrain in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in particular case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that the power should be exercised very cautiously and with circumspection, not in a routine manner, thereby should not be asked to investigate for small matter, only where the incident has national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental right". The high court held that it did "not feel it proper to straightway give direction to lodge a criminal case" and directed that all the material should be placed before the chief justice of the high court to look into the matter as to whether it was as appropriate matter which required the lodging of a criminal case.

In *Mahendra Singh* v. *State of Uttarakhand*,[33] the High Court of Uttarakhand had, in a PIL, directed the state government "to ensure that no loudspeaker or public address system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by giving an undertaking that the noise level shall not exceed more than 5dB (A) peripheral noise level." However, the sound level of 5 dB (A) sound level was as good as silence. It transpired from a reading of the decision that the court had intended to say that the noise level shall not exceed by more than 5 dB (A) peripheral noise level above the ambient noise standards specified for the area in terms of the Noise Pollution (Regulation and Control) Rules, 2000.

One Munawar Ali, though not party to the PIL, filed an application in the PIL for correction of the said decision. Munawar Ali pleaded that he was a social worker and a "mutawalli" and was elected as a member of the State Waqf Board by the "Mutawallies" of all the Waqfs in the State of Uttarakhand. He pleaded that in view of the directions given in the PIL in which he was not a party, the district administration was prohibiting him from using loudspeakers in the Mosque. The permissible limit of

33 AIR 2020 Utr 165.

sound as per the directions *i.e.* 5dB (A), effectively meant that loudspeaker could not operate, and he had been practically stopped from using a loudspeaker in a Mosque!

There was a difference of opinion between the members of the division bench of the high court as to whether such application could lie at the instance of a person who was not party to the PIL. Accordingly, the matter was referred to the third judge, who held it could. The court observed that "(t)he drop of a needle makes a sound of 5 dB (A)! Normally human breathing makes a sound which is louder, which is 10 dB (A)." Hence, such prescription of sound level was simply an inadvertent error, an accidental slip or omission and that the court had the inherent powers to correct the same even *suo moto*. The mere fact that there was an application as well for such correction was immaterial. The court noted that it was also a superior court and a "Court of record", and had inherent powers and a duty to correct its records. The apparent error ought to have been brought to the notice of the court by any of the parties to the petition. It could have been noticed by the Registry and should have been placed before the appropriate Court for corrections. This was never done. Yet the ultimate responsibility would always be of the court as no one can suffer due to the mistake of the court. It mattered little how the matter came up before the court; whether it was clothed in the shape of a review or a mere application under Section 152 of the Code of Civil Procedure, 1908 was not relevant. The court emphasised that the rules of procedure were after all the handmaids of justice. Consequently when there was no doubt as to the powers of the court in correcting an apparent error, the correction must be done. The court accordingly corrected the apparent error.

VII PIL AND POLICY MATTERS

In *Anjuman E Shiate Ali* v. *Gulmohar Area Societies Welfare Group*,[34] the appeal before the Supreme Court arose from the PIL disposed of by the High Court of Bombay which had sought the protection of two plots originally left towards garden/open spaces in the layout approved in the year 1967, and that was now proposed to be used for residential construction by the appellants under the subsequent development plan of 1999 of Maharashtra Housing and Area Development Authority. The court noted that the layout was approved and all the plots were utilized for construction, except these two plots which were left towards open space/garden. The court, while agreeing with the high court's decision, held that the appellants, having had the benefit of such approved layout and after making constructions in all the plots except these two plots, could not claim that they are entitled to make constructions on these two plots as well merely because in the subsequent development plan prepared, the authorities had not indicated the open spaces/garden, which were already indicated in the approved layout in such residential area.

The court held that it was fairly well settled that the open spaces/garden left in an approved layout could not be allowed for the purpose of construction. Further, the open spaces were required to be left for an approval of layout or for the purpose of

34 AIR 2020 SC 2011.

creating lung space for the owners of other plots where constructions were permitted. The subsequent development plan would not divest the utility of certain plots which were reserved for open spaces in the approved layout. The Court accordingly dismissed the appeal.

In *T. Jeevan Reddy* v. *The State of Telangana*,[35] the grievance in five PILs before the High Court of Telangana related to the cabinet decision dated January 31, 2015, whereby the Council of Ministers had resolved to construct a new Secretariat building complex in the same campus where the secretariat buildings were existing. The cabinet had subsequently decided on June 18, 2019 to either modify the present Secretariat building or to demolish the same in order to construct a secretariat building complex. The court took the view that although the cabinet decision would have financial ramification, it was a general policy decision. The court emphasised that it did not sit as an appellate authority over the policy decision of the government. In the present case, the cabinet had yet to take a final decision to demolish the present secretariat complex and to raise a new one. The court pointed out that it could not go into the issue whether or not the present buildings were adequate, and it was for the government to take such decision in light of its needs and requirements. As regards the contention of the petitioners that the state could not afford a new secretariat, the court relied on the doctrine of separation of power to hold that it was not for the judiciary to decide as to how and when expenditure was to be incurred by the executive. The availability of the capital and the incurring of expenditure were issues that fell squarely in the arena of the executive. Holding that the judiciary should be wary of entering into the territory reserved for the executive, the court dismissed the PILs as being without merit.

In *Rumman Uddin* v. *State of M.P*,[36] the grievance in the PIL before the Madhya Pradesh High Court pertained to the failure on the part of the authorities in ensuring the induction of Urdu language as a subject in school education despite millions of Indians speaking Urdu, and Urdu being officially recognised as regional language of India. The PIL sought a direction to make Urdu a compulsory subject in all schools upto Class XII and the creation of teaching posts in schools for teaching Urdu subject.

The court referred to article 350A inserted by Constitution (7th Amendment) Act, 1956, which *inter-alia* provided that it shall be the endeavour of every state and of every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. The court took the view that article 350A did not direct that primary education be given in the mother-tongue of specific linguistic minority groups children. Rather, the article limited its intent by incorporating word 'instruction' and not 'education'. The article could not be construed to make it mandatory to incorporate any specific language in any specific syllabus. The court further noted that specific posts of teacher for Urdu language had been sanctioned by the Lok Shikshan Sanchalnalaya, Madhya Pradesh, and hence sufficient endeavour had already

35 2020 (4) ALT 360.

36 AIR 2020 MP 147.

been made by the government with regard to article 350-A of the Constitution. The court dismissed the PIL as being without merit.

VIII PIL AND ALLEGED ARBITRARY ACTION/INACTION BY THE STATE

In *Ghanshyam Upadhyay* v. *State of U.P.*,[37] the PIL before the Supreme Court had sought action with regard to the destruction of the residential building and other properties of the accused Vikas Dubey by the authorities and to safeguard the life of the accused. Before the PIL was taken up for consideration, the said accused was killed by the police in an alleged encounter. The state, apart from constituting a Special Investigation Team (SIT), had also constituted a Commission of Inquiry under the Commission of Inquiries Act, 1951. The petitioner filed an application in the PIL seeking that the Judicial Commission constituted by the state be scrapped and a SIT as sought by the petitioner be constituted by the court to carry out the investigation. The petitioner sought such relief in view of the alleged conflict of interest and likely bias on the part of the chairman and the Member of the Commission, and relied upon an article published in "The Wire" dated July 29, 2020.

The court noted that the entire basis for making the allegations was the said article and that there was no other material on record to confirm the truth or otherwise of the statement made in the newspaper. The court held that it would have to be very circumspect while accepting such contentions based only on certain newspaper reports as a newspaper item without any further proof is of no evidentiary value. The court accordingly disposed of the application.

In *J&K High Court Bar Association* v. *Union of India*,[38] the PIL before the Jammu and Kashmir High Court (Srinagar) was filed by the Jammu and Kashmir High Court Bar Association, Srinagar *inter-alia* seeking that the state be prohibited from using 12-bore pellet Gun and or of any other bore and cartridges containing pellets as a means of crowd control against any group of people, including protestors in Jammu and Kashmir; that all officers who took the decision of using the pellet gun at the protestors and non-protestors after July 8, 2016 and those who actually fired the pellet guns be prosecuted; that cases be directed to be registered against such officers for causing unlawful bodily injury, deprivation of eye sight etc; and that compensation be given to those persons whose names were mentioned in the PIL as well as those whose particulars would come to the notice of the court during the hearing of the PIL and the compensation be determined in the context of violation of article 21 of the Constitution as made applicable to Jammu and Kashmir, since these persons had either been deprived of their eye sight and or had suffered bodily injury, trauma, agony, mental pain *etc*., Further directions were sought for bringing competent and well trained surgeons from outside Jammu and Kashmir so as to provide treatment to those who were not willing to go outside for treatment or have no means for meeting the expenses of such treatment inside or outside Jammu and Kashmir.

37 2020 (3) Crimes 326 (SC).

38 AIR 2020 J&K 117.

The PIL pleaded that the immediate cause for filing of the PIL had been the events which had occurred from July 8, 2016 wherein, according to the petitioner association, people, including teenagers, watching clashes between protestors and security forces, had received pellet injuries in their eyes, skulls and throats. It was alleged that about 4000 persons were injured and about 100 persons were blinded. The petitioner gave particulars of 46 persons whose eyes, according to it, were damaged by pellet injuries. Alleging excessive use of force against protestors, the petitioner referred to various provisions of the Code of Criminal Procedure, 1973 and other procedures to be adopted for dealing with and dispersal of assemblies.

The court referred to its previous order dated September 21, 2016 wherein the court had referred to the law and order problems in the valley and had stated that if the protest was not peaceful and the security persons were attacked by a huge and violent mob they had to necessarily use force as their self defence and for protecting public property. The court had taken the view that "so long as there is violence by unruly mobs, use of force is inevitable. What kind of force has to be used at the relevant point of time or in a given situation/place, has to be decided by the persons in charge of the place where the attack is happening. This Court in the writ jurisdiction without any finding rendered by the competent forum/authority cannot decide whether the use of force in particular incident is excessive or not." The court had stated that it was not "inclined to prohibit the use of Pellet Guns in rare and extreme situations." The court had further held that as no findings of use of excessive force in violation of the relevant guidelines had been recorded by any fact finding authority, the persons alleging use of excessive force, due to which death or injury has occurred, could very well approach the appropriate forum to establish the same and seek redressal. The state had directed to ensure that all injured persons were extended adequate medical treatment for whatever injury they sustained and to provide all possible required medical treatment to the injured by specialists and if specialists were not available in Jammu and Kashmir, appropriate arrangement had to be made to treat the patients by inviting specialists in Jammu and Kashmir or by shifting the patients to hospitals outside Jammu and Kashmir wherever specialists were available.

The court now recorded that medical treatment had been duly extended to all the injured persons, and that nothing more needs to be done in that regard. As regards the issue of grant of compensation to the injured persons, the court opined that:

> so far as the constitutional tort is concerned, the State has fulfilled its obligation, inasmuch as they have made ex-gratia payments to most of the injured persons as mentioned above, and with respect to the remaining it is categorically stated that their cases shall be decided in tune with the Government policy in that behalf in due course of time. We think that in the event any individual person feels that he has not been adequately compensated commensurate with the injury he had suffered, nothing can come in his way to claim such compensation as he may wish from the State under the private law in an action based on tort through a suit instituted in a court of competent jurisdiction. This Court in this PIL, in its jurisdiction under Article 226 of the Constitution

> of India, cannot grant a relief to the satisfaction of every such individual allegedly injured in police action, especially so when there is a finding recorded by the Court in its order dated 21.09.2016 that almost every day, in the guise of protests, the security personnel, their camps and Police Stations were targeted by unruly crowds, and that, if the protest is not peaceful and the security persons are attacked by huge and violent mobs, they have to necessarily use force in their self defence and for protecting public property. Therefore, strictly speaking, it is not a case where compensation is being sought or claimed for wrong doing of any security force personnel, or for violating any fundamental right of any citizen by them, but for discharge of public duty by such security force personnel who were being attacked by violent mobs during the relevant period. In any case, since the Government has discharged its obligation, nothing more needs to be done in this PIL.

The court accordingly dismissed the PIL.

In *Shivsankar Mohanty* v. *State of Odisha*,[39] the PIL before the High Court of Orissa, sought a direction to the state to follow the provisions of section 3(4) of the Commissions of Inquiry Act, 1952 in laying the inquiry report of Justice (Retd.) C.R. Pal Commission before the Legislature of the State of Odisha. The PIL pleaded that the Government of Odisha had appointed Justice (Retd.) C.R. Pal as the single member Commission to look into feasibility and desirability of having a High Court of Orissa Bench outside its location at Cuttack. The State Government, without examining the report expeditiously and without taking any action promptly, had kept the report pending for years together. The PIL contended that in view of section 3(4) of the 1952 Act, the government should cause the inquiry report to be laid before the state legislature, together with a memorandum of action taken thereon, within a period of six months of the submission of the report by the Commission to the Government.

The court examined the provisions of the said Act and noted that the power of the Commission under the Act was only to make a recommendation in respect of the matter referred to it after investigation/inquiry. The court held it to be the settled position of law that whether a duty under a statute was obligatory, mandatory or directory had to be ascertained from the scheme of the statute and the nature of the duty imposed, and, hence, the use of the terms 'shall', 'must' or 'may' were not always conclusive factors. Where a statute imposed a public duty and laid down the manner in which and the time within which the duty be performed, injustice or inconvenience resulting from a rigid adherence to the statutory prescription might be a relevant factor in holding that such prescriptions were only directory. The court took the view that the provisions of section 3(4) of the Act were directory and not mandatory, and accordingly no direction by way of writ of mandamus could be issued to the state for laying the report submitted by Justice (Retd.) C.R. Pal Commission before the State Legislature. The PIL was thus dismissed as being without merits.

39 AIR 2020 Ori 52.

In *Chandresh Sankhla* v. *The State of Rajasthan*,[40] the grievance in the PIL before the High Court of Rajasthan was in respect of the online game known as "Dream 11" and the said online game was alleged to be betting of cricket team and amounting to gambling. The PIL sought directions to the authorities to stop such illegal game of gambling and betting, to book criminal cases against the named organisers and to make necessary arrangements so that such organised crime was not committed in the country. The state referred to judicial decisions of various high courts where it had been laid down that "Dream 11" game did not involve any commission of offence of gambling and betting, and pointed out that the Special Leave Petitions against such decisions of the High Courts had been dismissed by the Supreme Court. The state pleaded that as per section 12 of the Rajasthan Public Gambling Ordinance, 1949, the game involving "mere skill" was exempted from the applicability of the Act/Ordinance and since "Dream 11" game had been held to be a game of skill, no fault could be found by the authorities in the activity which was carried out by the organisers. The court dismissed the PIL, holding that the issue of treating the game "Dream 11" as having any element of betting/gambling was no more res integra.

In *Geetanjali Kanhar* v. *State of Odisha*,[41] the PIL before the High Court of Orissa challenged that the conversion of the land from 'Gochara' to 'Patita' by the State Odisha Government Land Settlement Act. The PIL relied upon section 4 of the Panchayats (Extension to the Scheduled Areas) Act, 1996 which inter-alia provides that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the scheduled areas for development projects and before resettling or rehabilitating persons affected by such projects in the scheduled areas. The PIL pleaded that neither the Gram Sabha nor the Panchayat had been consulted before the conversion of the land. The court held that there being no "acquisition" of the land, the provisions of section 4 had no application and that the consultation of the Panchayat or the Gram Sabha was not required.

The court held that the state was the owner of the land and had followed the procedure prescribed under Odisha Government Land Settlement Act and the rules made thereunder for the conversion. The PIL was thus a frivolous, mischievous and vexatious one, against the interest of the public and standing in the way of discharge of the state's constitutional function and duty. The court dismissed the PIL with costs of Rs. 30,000/- on each petitioner and Rs 10,000/- on each intervenor to be deposited within a period of two months with the Registry of the court, which "would do well to transfer the same to the account of the Odisha State Legal Services Authority for its proper utilization in providing free legal aid and services to those in need."

In *Muppa Venkateswara Rao* v. *State of Andhra Pradesh*,[42] the grievance in the PIL before the High Court of Andhra Pradesh was that the buildings of the Panchayat, which fell within local self-government, were being painted with the colours of the

40 2020 (2) RLW 1601 (Raj.)

41 2020 (I) ILR-CUT 522.

42 2020 (3) ALT 15.

flag of the ruling YSRC Party to take political mileage just prior to the elections of the Panchayats, thereby adversely affecting developmental activities as also the feelings of NRIs who had contributed 80% of the funds for developmental activities in the village. The further grievance was that the members of the ruling YSRC party were continuing to do so, despite interim court orders directing the state government not to paint the government buildings with the colours of the flag of a particular political party.

The court considered the various objections of the state on the maintainability of the PIL filed at the instance of the affected villagers to conclude that the PIL was maintainable. The court held that it could not be gathered that the villagers had come to the court to satisfy any personal grudge or enmity against the state. Rather, the villagers wanted continuous financial support from the NRIs who were upset by the use of developmental funds for such state action, and that the PIL involved the issue of misuse of public money and the use of government property for political mileage on the eve of Panchayat election. Indeed, the instructions issued by the government would amount to violation of the election laws, and also in non-observance of the rule of law. The court held that the hallmark of PIL was that the citizens could approach the court to ventilate the grievance of a person or class of persons for developmental activities, for marginalised and oppressed category. The PIL ought to be filed to preserve the rule of law, and to ensure the accountability and transparency within the structures of governance.

The court found that as per the National Building Code, 2016, which applied to the buildings of the local bodies and authorities, any sign of savouring political propaganda was not permitted in any circumstances on any government building covered by NBC. Rather, the painting of gram panchayat buildings in colours resembling the flag of ruling YSCRP would amount to evil practice, and would fall within the purview of violation of the election laws in light of the case law discussed by the court. The court, therefore, held the State action to be unjust, arbitrary and unreasonable.

The court, having found the PIL had espoused a justifiable cause and had not been filed with any ulterior motive, quashed the government instructions that had approved the proposal to paint the buildings of the gram panchayat with the impugned colours, restrained the authorities from painting the government buildings/panchayat buildings in colours similar to the colours of the flags of the parties or the party offices by use of public money, and directed the authorities to remove the colours already painted. The authorities were further directed to formulate the guidelines to specify suitable colour combination for painting of the panchayat/government buildings and other properties belonging to the government as well as local bodies and authorities, which should not be similar to the colours of the flags and office of political parties.

The court further held that the Election Commission must take steps to ensure the conduct of free and fair election, uninfluenced by corrupt and evil practices. The State Election Commission could not sit as silent spectator, waiting for election

notification, but was bound to issue guidelines consistent to the guidelines of the Central Election Commission. The court directed the State Election Commission to hold free and fair election of the local bodies, and to take appropriate steps to stop illegal practices by any party.

In *Citizens Legal Right Association* v. *Union of India,*[43] the PIL before the High Court of Kerala , questioned whether the imposition of fine by the authorities under the Passport Act of 1967 was without authority of law and hence an interference with the protection of life and personal liberty guaranteed under article 21 of the Constitution.

The court analysed the provisions of the said Act to hold that while the authorities had the power, under the Act and the Rules framed thereunder, to initiate prosecution for the contravention of the provisions of the Act, the power to punish with imprisonment was conferred only upon magistrates as provided under the Code of Criminal Procedure, 1973. Fine, as an alternative to imprisonment on a finding of guilt, could therefore be imposed only by the competent magistrate who had adjudicated the issue on the basis of a complaint filed by the passport authority. In light of such finding, the court rejected the objection of the state as to the maintainability of the PIL. The court, holding that imposition of fine by the authorities under the Act was without authority of law and in violation of article 21 of the Constitution, directed the revocation of the penalty list under the specified provisions of the Act so that the power of the passport authority would be limited only to issue passport or to refuse/ reject, impound/revoke or restrict the validity of passport as stipulated in the Act.

IX PIL AND LOCUS STANDI

In *Narendra Kumar Yadav* v. *State of U.P.*,[44] the PIL before the Lucknow Bench of the High Court sought the quashing of a letter of the Chief Engineer (Purchase) of U.P. Jal Nigam requesting one M/s. Crown Agents (India) Pvt. Ltd. to inspect one Rashmi Metaliks Ltd., Kolkata, and the issuance of mandamus directing the authorities not to permit re-inspection of Rashmi Metaliks Limited, Kolkata. The PIL was filed by a lawyer who claimed to be involved in social work but did not disclose his credentials or the nature of social work so far done by him.

The court observed that the normal rule was that a person, who suffered a legal injury or whose legal right was infringed, alone had *locus standi* to invoke the writ jurisdiction to avoid miscarriage of justice. The said common rule of *locus standi* stood relaxed where the grievance was raised before the court on behalf of poor, deprived, illiterate or the disabled persons, who could not approach the court independently for redressal of the legal wrong or the injury caused to them on account of violation of any constitutional or legal right. The person filing the petition in Public Interest should precisely and specifically, apart from other things, state his credentials and the public cause he was seeking to espouse. Therefore, disclosure of credentials and the public purpose sought to be espoused were also essential elements to be stated in initiating proceedings in public interest.

43 AIR 2020 Ker 191.

44 2020 6 AWC 5274 All.

The court further noted that the controversy sought to be raised was one relating to award of contracts and the possibility of the petitioner being set-up by the rival groups could not be ruled out. The court held that the PIL was certainly not a petition on behalf of any disadvantageous group of persons, rather one on behalf of a competitor. Holding that a dispute between two warring groups was in the realm of a private dispute and could not be allowed to be agitated as a PIL, the court dismissed the petition as not maintainable at the behest of the petitioner.

In *Abhijit Mishra* v. *Union of India*,[45]the grievance in the PIL before the High Court of Delhi pertained to the non-inclusion of advocates in the definition of the word "professionals" under the Micro, Small and Medium Enterprises Development Act, 2006, as a result of which advocates as a class were deprived from the benefits under this Act. The court observed that PIL was for the benefit of a class of persons if the affected persons were unable to access the courts, e.g. the poorest of the poor, illiterates, children, and other classes of people who may be handicapped by ignorance, indigence, illiteracy or lack of understanding of the law. The Court held that it saw no reason to entertain the PIL as "advocates are capable enough to approach the Court". The court dismissed the PIL holding that "(a)s and when any advocate will approach the court, decision can be taken on merits in accordance with law, rules and regulations applicable to the facts of the case."

X PIL AND ALTERNATIVE REMEDIES

In *Bajrang Bahadur Singh* v. *State of U.P.*,[46] the PIL before the High Court of Allahabad sought a writ of *mandamus* directing the authorities to remove fresh illegal encroachment on Gram Sabha Land of village Thanagaddi, Tehsil Kerakat, District Jaunpur. The state took a preliminary objection that the petitioner had an alternative remedy to file representation under section 67 of the Revenue Code, 2006 before the Assistant Collector concerned.

The court held that in view of the statutory alternative remedy available to petitioner, the petitioner could submit a representation before the assistant collector concerned bringing the relevant facts regarding encroachment over the aforesaid plot. The court directed that if no proceedings under section 67 of the said Code had already been registered in relation to encroachment over the said plot, the assistant collector, on receiving the aforesaid representation, shall inquire into the allegations made by the petitioner after following the procedure prescribed under section 67 read with Rule 67 of the Uttar Pradesh Revenue Code Rules, 2016, and pass appropriate orders within a period of six months from the date when the aforesaid representation was filed by the petitioner. In case the allegations of the petitioner were found to be true, the Assistant Collector shall ensure that the encroachments over the land in question be removed within a period of one month thereafter unless the order of Assistant Collector was stayed by any superior authority or Court in any appeal or revision filed against the order of Assistant Collector. The Court also directed that, if the petitioner or any other member of the Gaon Sabha filed an application in the case registered

45 2020 SCC OnLine Del 927,W.P.(C) 4695/2020.

46 2020 5 AWC 5100 All.

before the Assistant Collector, to be heard in opposition to the noticee in the said cases, the Assistant Collector shall afford a reasonable opportunity to the said persons to oppose the defence, if any, taken by the noticee. The Court accordingly disposed of the PIL.

In *Shrawan Kumar Yadav* v. *State of U.P.*,[47] the grievance in the PIL before the High Court of Allahabad pertained to encroachment on Gaon Sabha land by private parties and sought the removal of such encroachment by the authorities. The state pointed out that the petitioner had the statutory alternative remedy to approach the assistant collector as provided under section 67 of the Uttar Pradesh Revenue Code, 2006. In view of the statutory alternative remedy available to petitioner, the court disposed of the PIL while granting permission to the petitioner to submit a representation before the assistant collector concerned regarding the encroachment. The assistant collector was directed to inquire as per the prescribed procedure into the allegations made by the petitioner and to pass appropriate orders within a period of six months from the date when the aforesaid representation was filed by the petitioner. The court issued the further direction that should the allegations of the petitioner be found to be true the assistant collector shall ensure that the encroachments over the land in question be removed within a period of one month thereafter unless the order of assistant collector was stayed by any superior authority or court in any appeal or revision filed against the order of assistant collector.

In *Shri Kant Mishra* v. *State of U.P.*,[48] the grievance in the PIL before High Court of Allahabad was that a pond, which was public land, had been encroached upon and converted into the name of a private person with the collusion of the revenue authorities. The Court referred to the pleadings of the State as to how and under what manner the same was converted in the name of the private person. The Court held that should the petitioner still be aggrieved against the action of the authorities, he had the statutory alternative remedy available under section 67 of the Uttar Pradesh Revenue Code, 2006 read with Rule 67 of the Uttar Pradesh Revenue Code Rules, 2016 to approach the Assistant Collector concerned. Accordingly, the PIL was disposed of.

XI PIL AND SERVICE MATTERS

In *Govindanunni K.M.* v. *The Chancellor, Kerala Agricultural University*,[49] the PIL before the High Court of Kerala sought a declaration as to the ineligibility of the candidate to hold the post of Dean in the Agricultural Engineering Department of the Kerala Agricultural University. The court referred to the case law on the scope and nature of PIL and on the need to ensure that it was used as an effective weapon in the armoury of law for delivering social justice to the citizens. While cautioning against the misuse of PIL for personal gain or private motive or political motivation or other oblique consideration, the Court relied on the case law for the proposition that there was no question of any public interest involved in service matters, being essentially

47 2020 3 AWC 2973 All.

48 2020 3 AWC 2971 All.

49 2020 Lab IC 3419.

between the employer and the employee, and that PIL in service matters was as such not maintainable.

In *Rubi* v. *State of U.P.*,[50] the PIL before the High Court of Allahabad sought a writ in the nature of *quo warranto* declaring the appointment of the named stenographer at Zila Panchayat, Muzaffarnagar as null and void, a writ of *mandamus* directing the State to terminate the services of said stenographer with immediate effect and directions to issue fresh advertisements as prescribed by the relevant service rules, to constitute a high level committee to enquire into the matter of illegal appointment of the stenographer and to take appropriate action against such persons who were found complicit in the illegal appointment. The petitioner, who was a member of Zila Panchayat, Muzaffarnagar, detailed complete disregard of the existing laws, rules and guidelines with respect to an appointment made at the office of Zila Panchayat, Muzaffarnagar. The court referred to the case law on the purpose of PIL jurisprudence and for the proposition that PIL was not maintainable in service matters. The court accordingly dismissed the PIL as not being maintainable.

XII MISUSE OF PIL

In *Anand* v. *Union of India*,[51] the PIL before the High Court of Bombay (Nagpur Bench), sought an enquiry in respect of the manufacturing and marketing of soil testing fertilizer recommendations (STFR) without the facility of testing of two mandatory parameters of copper and nitrogen during the year 2014 to May 2, 2018. The PIL further sought to restrain the marketing of STFR without getting its validation in at least five different agro-climatic zones in the country.

The court detailed the scheme of Soil Health Management (SHM) of the National Mission for Sustainable Agriculture (NMSA). The scheme was one of the most important interventions under the NMSA and it was aimed at promoting location as well as crop specific sustainable soil health management, creating and linking soil fertility maps with macro-micro nutrient management and judicious applications for fertilizer and organic farming sciences. The court noted that the object was to improve soil quality and profitability of farmers, employment generation for rural youths, improvement of timeliness in analysis of soil samples, introduction of the single window approach from collection to issue of the Soil Health Card so as to minimize tools and maximize convenience to farmers, online delivery of Soil Health Cards to farmers using soil health card portal, and to provide soil testing facilities to farmers at their doorstep. Under the scheme, the Department of Ministry of Agriculture and Farmers Welfare, Government of India, had established soil testing projects at the village level with financial assistance being provided to the villagers. The court also examined the STFR technology developed and commercialized by the Indian Council for Agriculture Research (ICAR) and the Indian Agriculture Research Institute (IARI).

The court found that the petitioner was not a person directly aggrieved, but a spokesperson of Nagarjuna Agro Chemicals, which itself was availing the STFR

50 2020 6 AWC 5596 All.

51 2020 (1) BomCR 744.

technology. This company, in violation of non-disclosure of technology know-how provisions, manufactured and marketed "Mridaparikshak" on its own by replicating the idea/concept of STFR Meter to provide soil testing at the farmers' doorstep.

The court accordingly held that the PIL was actuated by ulterior motive of having commercial gain by eliminating competition and creating monopoly, and was thus an abuse of process of court. The court was of the view that the PIL did not have public interest or any intention to subserve interest of farmers. Rather, the petitioner lacked bona fides and genuine public interest. Holding that there was no evidence produced on record to order any enquiry as sought, the court dismissed the PIL. The court held that it had "to be intolerant to such situation and the practice of fling such frivolous and vexatious litigation, without having any genuine interest and lacking in all *bona fides*. It needs to be curbed and treated with iron hands, so as to deter the litigants from taking the court for a ride by misusing the process." Accordingly, the court imposed costs of Rs 50 lakhs to be paid to in equal share to the ICAR and the IARI within a period of four weeks.

In *Surekha* v. *The Municipal Corporation, Shimla*,[52] the PIL before the High Court of Himachal Pradesh *inter- alia* sought a restraint order against the private respondent from digging the government land.

It transpired from prior litigation that the private respondent had taken permission to construct a building on his plot by showing that there was an approach road to the said plot. However, the revenue authorities had conducted an inquiry. The settlement officer had found tampering of the revenue record by the patwari and the concoction of the village map to show government land as road. The findings of the inquiry had been affirmed in appeal. A co-ordinate bench of the high court had already observed in another matter that it would be open for the state to reconsider the question of withdrawing or cancelling the requisite permission in accordance with law.

In the PIL, the court held that the "petitioner pretends to take this case as a public interest, whereas, the facts reveal that he is immediate neighbour having number of litigations, inter se, and as such it is certainly not in public interest." The court further found that some portions of the government land had also been encroached upon by the petitioner and her husband. The court disposed of the PIL giving the certain directions keeping in view the 'spirit' of law and not the 'letter' of law, including a direction to the petitioner to remove the encroachment on government land.

In *Gaurav Jain* v. *Union of India,*[53] the PIL before the High Court Delhi *inter-alia* sought (i) the prohibition of the eviction of the tenants on the grounds of non-payment of rent till the crisis caused by the COVID-19 pandemic lasted, or till a date the court deemed fit (ii) the creation of public awareness about the orders related to the issue of rent (iii) the establishment of an easy-to-access 'Rent Resolution Commission' with a mandate to provide free and prompt resolution, primarily through mediation, to tenancy related issues arising between tenants and landlords due to or

52 2020 (2) Shim LC 807.

53 2020 (2) RCR (Rent) 72.

during the period when Disaster Management Act was in effect in India/Delhi (iv) the declaration that tenants who had not been able to pay the rent for the months of April and/or May and/or June would not be asked or coerced in any manner to pay the outstanding rent for that period unless the landlord of such a tenant was able to show to the 'Rent Resolution Commission' that the tenant did not suffer any substantial loss of income during the lockdown period; (v) the constitution of a 'Rent Auxiliary Fund' with sufficient corpus to make prompt payment of compensation to the landlord and tenants, as the case may be (vi) the amendments to the standard operating procedure of the Delhi Police where, if their control room officer received any distress call on '100 or 112' from a tenant or a landlord, as the case may be, the officer would connect the caller, after receiving her consent, to 'Rent Resolution Commission', if the officer concluded that the dispute largely revolved around non-payment of rent and it had not yet led to the eviction of the tenant or commission of any violence or bodily injury or crime against women and (vii) the empowerment of the 'Rent Resolution Commission' to give a one-time amnesty to the landlords or the tenants, as the case may be, against any civil or criminal proceeding against them for lack of documents like rent agreement, lease deed or police verification form *etc.*

The court held that the PIL was thoroughly misconceived. The court observed that the payment of rent depended on a contractual arrangement between the tenant and the landlord, and that it was not the case of the petitioner that all such contracts were entered into under coercion, fraud, mistake, undue influence etc. nor was there any compulsion, on the part of tenant to enter into such contract with landlord. The court held that it could not, by a general order, waive the payment of rent while exercising powers under article 226 of the Constitution, and that too in the absence of the landlords. The court examined each of the other prayers in the PIL to conclude that these were not issues for the court in writ proceedings, but matters of policy which lay in the legislative/executive domain. The court emphasised that it was not the maker of the law, and could not draft a brand new law, except where the law was silent or where some lacuna was to be filled up.

The court held that looking at the averments made, this was not a PIL but a "publicity interest litigation" and an abuse of the process of the law. Noting that the petitioner was a practicing lawyer and insisted on addressing ill-conceived arguments wasting valuable judicial time, the Court dismissed the petition with costs of Rs. 10,000/- to be deposited with Delhi State Legal Services Authority to be utilized for COVID relief and welfare measures.

In *Nageshwar Mishra* v. *The Union of India,*[54] the PIL before the High Court of Allahabad sought a *mandamus* commanding the Government of India to deprive the Indian citizenship of Kanhaiya Kumar, the former President of the Students' Union of Jawahar Lal Nehru University, Delhi for allegedly raising anti-national slogans during an event that took place in JNU campus on 09.02.2016, and for which he and others were facing the trial after receiving nod for prosecuting them in a sedition case.

54 2020 (142) ALR 88.

The court referred Section 10 of the Indian Citizenship Act, 1955 and articles 5 to 11 of Constitution dealing with the citizenship to conclude that as Kanhaiya Kumar was a citizen of India by virtue of having been born in the territory of India, he could not be deprived of citizenship by law. The court therefore held the PIL to be completely devoid of merit and wholly misconceived. The court added that the question of deprivation of citizenship could not arise merely because Kanhaiya Kumar was facing trial on charges of allegedly raising the inflammatory slogans, more so when it may result in making the person stateless. The court held that the petition "has been preferred with the sole motive of gaining cheap publicity, without even going through the relevant provisions of the Constitution of India and The Indian Citizenship Act, 1955." Observing that the "valuable time of this Court, which is functioning in its limited strength, during the period of the pandemic, has been wasted" by the petitioner by filing the petition not to espouse public interest but to gain publicity, the PIL was an abuse of the process of law. The court dismissed the PIL with cost of Rs. 25,000/- to be remitted to the Advocate Association, High Court, Allahabad.

In *Ajay Bada Jena* v. *Commissioner of Bhubaneswar, Municipal Corporation*,[55] the PIL before the High Court of Orissa alleged that the Bhubaneswar Municipal Corporation (BMC) was using the cremation ground for a dumping yard to accumulate waste materials, drain materials, latrine materials *etc.*, collected from different areas of Bhubaneswar Smart City. The authorities, with the help of some contractors, had cleaned the cremation ground by JCB machines and had started construction of the dumping yard which was just adjacent to the village road and human inhabited area, where apartments, private buildings, public offices and schools were situated. The PIL pleaded that in the event of construction of a dumping yard, the pungent gas emitted out of accumulated waste materials would cause inconvenience to human inhabitants in the area.

The state contended that the Bhubaneswar Municipal Corporation was not constructing any dumping yard. Rather it was constructing a Micro Compositing Centre (MCC) for a particular ward only, and that the MCC was being constructed as per the direction of the National Green Tribunal and the guidelines enumerated in Solid Waste Management Rules, 2016. It was further contended that the cremation ground was, in any case, not being used for cremations and that the owners of the side plots, including the petitioner, were using such vacant land for their own purposes. The State alleged that the petitioner himself had encroached upon the land and was using the same as parking place.

The court held on facts that the petitioner had suppressed material facts, hindered developmental activities being carried out, and abused the process of the court for private and oblique motives. The court held that PIL should not be 'publicity interest litigation' or 'private interest litigation' or 'paisa income litigation'. Terming the PIL to be frivolous and vexatious, the court dismissed the same with cost of Rs. 10,000/- to be deposited in the Advocate's Welfare Fund of the High Court of Orissa Bar Association.

55 AIR 2020 Ori 156.

XIII CONCLUSION

The traditional judicial function is essentially to adjudicate disputes. The first ever PIL, *Hussainara Khatoon* v. *State of Bihar,*[56] which was filed in the Supreme Court on January 11, 1979, was a different kind of case – one that lacked a dispute. This case brought to the notice of the Supreme Court the pitiable plight of undertrial prisoners in jails in the State of Bihar, many of whom were incarcerated for periods longer than they would have served had they been tried, convicted and given maximum sentence. Some of the prisoners did not even know why they were there; others were actually victims of a crime but their presence was required during trial. This PIL was premised on a novel interpretation of article 32 of the Constitution to the effect that the language of this article did not preclude a person from moving the Supreme Court, without even a power of attorney or vakalatnama, on behalf of such disempowered prisoners to call upon the court to discharge its own constitutional obligation under article 32 to protect their guaranteed fundamental rights. The Supreme Court entertained this PIL, leading eventually to the release of an estimated 40,000 undertrial prisoners on personal or no bond.

Hussainara Khatoon was followed by perhaps the most horrifying PIL known as the *Bhagalpur Blindings'* case (*Khatri* v. *State of Bihar,*[57] *Anil Yadav* v. *State of Bihar*[58]) that highlighted how many suspected criminals had been blinded by the police through acid put into their eyes. It was found that at least 33 persons had been blinded by the police in custody using needles and acid and that the burnt eyes were then bandaged with acid soaked cotton and left to rot. A few years later, the Court even awarded monetary compensation under article 32 to an individual for the violation of his fundamental rights in another matter, namely *Rudul Sah* v. *State of Bihar,*[59] which was an offshoot of *Hussainara Khatoon*. Rudul Sah was arrested in 1953 on the charge of murdering his wife and was acquitted by the Sessions Court in 1968, to be released on further orders. These orders did not come. By the time Rudul Sah was released in 1982, he had spent 29 years in prison for a crime he had never committed, of which 14 years were after his acquittal!

None of these cases involved a dispute – it is simply not open to the state to incarcerate people for decades awaiting trial or post acquittal or to blind people in custody. PIL, as conceived, was a remedial jurisprudence. It was a non-adversarial, collaborative and investigative strategy formulated to protect the fundamental rights of the marginalised and destitute who on account of poverty or other disability lacked access to the Courts.

Given such remedial purpose of PIL, the checks and balances of the common law system on the petitioner and the court became somewhat unnecessary. As regards the petitioner, the rule of *locus standi* got relaxed. Indeed, it was necessary that the

56 AIR 1979 SC 1360.
57 AIR 1981 SC 928, 931, 1068.
58 AIR 1982 SC 1008.
59 AIR 1983 SC 1086.

petitioner should not have personal stake in the matter. The manner in which the litigation could be initiated became flexible. A letter or telex to the court was good enough. The petitioner was relieved from the burden of proving the case. The petitioner was not even *dominus litus*, and the court could continue the action should the petitioner withdraw from it. Public policy doctrines like *res judicata*, *estoppel*, *laches* were inapplicable.

It may be stated here that the checks and balances on the court in the adversarial common law system are calculated to ensure that the exercise of judicial power is objective and based on what is properly on record. These limitations require the court to be bound by the pleadings, issues raised and evidence led. The court is to strictly adhere to procedural law in order to ensure a level playing field for both disputing parties, and to decline relief if it requires the court to legislate or impinge on policy issues.

In light of the constitutional obligation of the Supreme Court under article 32 to enforce fundamental rights, these checks and balances on the court became irrelevant when entertaining and dealing with a PIL filed for the benefit of those who lacked access to courts. In such PIL, the court could play an active role and even go beyond the pleadings, issues and evidence on record. The court could investigate into the allegations and set up committees to establish facts or to monitor or administer a situation. Should there be a vacuum in a given field of law or policy, the court could "legislate" or lay down policy *de novo* where the court felt it necessary to do so to protect fundamental rights. The judicial role thus transcended adjudication to assume new functions, including those of a social reformer, an administrator, an investigator, a monitor and an ombudsman - all necessitated by the obligation of the Supreme Court, and to the extent of its obligation, to protect the fundamental rights of those lacking access to the court in cases in which there was, as such, no dispute.

Such relaxation in a PIL of the checks and balances imposed by the adversarial system, whether on the petitioner or the court, could do no harm since the purpose of PIL was not to decide any dispute but only to protect the human rights of the millions that lacked access to courts on account of some disability.

It may be noted that there also exist public interest law mechanisms within the adversarial system, such as representative or class action under Order 1 Rule 8 of the Code of Civil Procedure, 1908. Class action has been used around the world to vindicate diffuse, collective and meta-individual rights of the public at large and the breach of public duties owed to them. After all, each member of the public would necessarily be affected by, say, environmental pollution or lack of integrity in governance and would form a class. Class action is litigated within the checks and balances of the common law system In class action, the court is required to be a neutral umpire, consider only those pleadings and issues which are before the court, observe procedural technicalities such as issuing notice to all the affected parties and require the development of detailed evidence. Such requirements prevent a busybody or an unscrupulous litigant from misusing the judicial process.

In *S.P Gupta* v. *Union of India*,[60] the Supreme Court expanded the scope of PIL to include cases involving such diffuse, collective and meta-individual rights of the public at large and the breach of public duties owed to them. Matters relating to, say, environmental pollution, corruption, electoral reforms or simply maintenance of the rule of law could now be litigated as PIL. The fallout of this was that even in these categories of cases, the court got relieved of the above checks and balances of the adversarial system that are calculated to ensure proper adjudication of the dispute by the court following judicially manageable objective standards. Given that each individual judge has his or her own set of beliefs, convictions and values and even varying affection for PIL, the exercise of judicial power would necessarily result in subjective, and hence arbitrary, exercise of power. It is such expansion of the scope of PIL which, in my view, enables any given bench to choose, without following judicially manageable objective standards, whether or not to entertain a PIL pertaining to diffuse, collective and meta-individual rights, and how to deal with the PIL which that Bench does entertain, as also to cite the "limits of the law" to dismiss the PIL which the Bench is not inclined to entertain.

Further, such undue expansion of the scope of PIL has also enabled a dishonest litigant to file a PIL to serve personal or private interests or with an oblique or extraneous motive, or merely for publicity. The misuse of PIL did lead to the Supreme Court laying down guidelines, notably in *State of Uttaranchal* v. *Balwant Singh Chaufal,*[61] which required each high court to formulate rules to *inter alia* discourage "the PIL filed with oblique motives". The Court mandated, amongst other requirements, that courts "should prima facie verify the credentials of the petitioner before entertaining a PIL" and "be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL".

In *Balwant Singh Chaufal*, the Supreme Court divided PIL into three phases: Phase I dealing with cases to protect the fundamental rights of "the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach" the writ courts; Phase II pertaining to "cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc."; and Phase III relating to "the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."

As pointed out elsewhere,[62] there is nothing in *Balwant Singh Chaufal* to indicate that the requirements that courts "should prima facie verify the credentials of the petitioner before entertaining a PIL" and "be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL" are inapplicable to cases described in Phase I, which pertains to protecting the fundamental rights of the marginalized. If that be the position, this two-judge bench decision is not only

60 AIR 1982 SC 149.

61 2010 3 SCC 402.

62 Hingorani, Aman (2020), "Revisiting PIL Jurisprudence", *available at*: https://thedailyguardian.com/revisiting-pil-jurisprudence/, *The Daily Guardian*, June 20.

contrary to much larger bench decisions of the Supreme Court but undermines the PIL jurisprudence itself as far as such unfortunate sections of society are concerned. The very rationale of conceiving PIL was to bring to the notice of the Supreme Court the flagrant violation of the fundamental rights of the marginalized sections of society, who because of extreme poverty, illiteracy, ignorance or similar disability could not approach the court. It then became the constitutional obligation of the court to investigate into the matter to inquire if their fundamental rights were protected and, if not, to take all necessary measures to do so. The focus of the PIL jurisprudence was on the Supreme Court's constitutional obligation to protect fundamental rights, and not on the petitioner being able to make out a case to move the Supreme Court. It was for that reason that the locus and credentials of the person moving the court were quite irrelevant and so was the satisfaction, prima facie or otherwise, of the court as to the correctness of the allegations before entertaining the PIL. It was for that reason that a press clipping or telex or letter to the court sufficed to trigger judicial action or permitted the court to act *suo moto*. It surely was not the job or duty of the citizen, upon discovering a flagrant violation of human rights of the poor, disabled or destitute, to go about establishing his or her credentials or leading evidence in court – and that too at his or her own time and expense. It was for the court, which was to transcend the judicial function of adjudication to assume the new roles discussed above, to shoulder the burden of establishing the facts through affidavits of the state or fact finding committees set up often at state expense. Notably, the court had sent its registrar to investigate into the allegations in the *Bhagalpur Blindings'* case. The above directions in *Balwant Singh Chaufal* have the chilling effect of persuading even the most public spirited citizen not to file a PIL for the impoverished and disabled millions or to get entangled with the court.

The resultant position of the current PIL jurisprudence is that on the one hand it enables the subjective exercise of judicial power by any given Bench in entertaining and dealing with a PIL, and at the same time it discourages citizens acting pro bono from taking recourse to PIL to protect the fundamental rights of the poor and the bewildered lacking access to courts. Such a sorry state of affairs highlights the need to revisit PIL jurisprudence and to reclaim it for the poor, disabled and marginalized. I have suggested[63] that the way forward could be to require only those cases which the court has described as falling in Phase I in *Balwant Singh Chaufal* be treated as PIL. This is not to say that the categories of cases falling in Phases II and III in *Balwant Singh Chaufal* are unimportant. However, the same issues could be raised, and the same brilliant judgements in relation thereto could be pronounced by the court, in public interest law mechanisms, like class action, within the adversarial system, complete with the checks and balances on both the petitioner and the court. This single step would prevent the misuse of PIL for oblique purposes, protect the sanctity of the judicial process, bring about objective exercise of judicial power and thereby enhance its legitimacy, and do away with the kind of requirements mandated by the court in *Balwant Singh Chaufal* which are now reflected in the PIL rules framed by

63 *Ibid.*

various high courts. More importantly, confining PIL to cases falling in Phase I will enable the court to more effectively discharge its constitutional obligation to protect the fundamental rights of the marginalized groups and disadvantaged sections of society – for whom the remedial jurisprudence of PIL had been originally conceived.