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## PUBLIC INTEREST LITIGATION

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## I INTRODUCTION

THE EXPRESSION “Public Interest Litigation”, means a legal action initiated in a court of law for enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected. This genre of litigation has emerged in an effort to provide legal representation to previously unrepresented groups and interest and such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide legal services to significant segments of the population which has traditionally been deprived and vulnerable section of the society. Public interest litigation is not in the nature of the adversarial litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived sections of the community and to assure them social and economic justice which has been the signature tune of our constitution.<sup>1</sup>

No wonder that Public Interest Litigation (PIL) has been a process of making of basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice. Justice Krishna Iyer put it in *Municipal Council of Ratlam v. Vardichand*,<sup>2</sup> that:<sup>3</sup>

...the truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of standing of British Indian vintage. If the centre of gravity of justice is to shift, as the preamble to the constitution mandates, from the traditional individualism of locus standi to the community orientation of Public Interest Litigation, these issues must be considered.

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1 *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402.

2 AIR 1980 SC 1622.

3 *Id.*, para 1.

In another similar judgment of *People's Union of Democratic Rights v. Union of India*,<sup>4</sup> Justice Krishna Iyer reiterated:<sup>5</sup>

...Public Interest Litigation" is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity....

He went on to elaborate the utility of Public Interest Litigation, emphasising that:<sup>6</sup>

...PIL is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. PIL is brought before the court not for the public of enforcing the right of one individual against another as happens in the case of ordinary litigation but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed...

## II EVOLUTION

As such the development of public interest litigation has been an extremely significant development in the history of Indian jurisprudence and the whole evolutionary process has passed through three distinct phase. In the first phase the decisions of the Supreme Court in 1970s loosened the strict *locus standi* requirements to permit filing of petitions on behalf of marginalised and deprived sections of society by public spirited individuals, institutions and/or bodies. Higher courts exercised wide powers given to them, under article 32 and 226 of the Constitution. Remedies sought from the courts in PIL went beyond the award of remedies to affected individuals and groups. Courts have monitored implementation of legislation and even formulated guidelines in the absence of legislation. If cases of 1970s and 1980s are analysed, the most of the PIL cases which are entertained by the courts are pertaining to enforcement of FRs of marginalised and deprived sections of the society. This is first phase or golden era of PIL. The high courts followed Supreme Court and exercise similar jurisdiction under article 226 of the Constitution.<sup>7</sup> The Supreme Court and the high courts by this process earned great respect and acquired great credibility in the eyes of the public because of their innovative efforts to protect and preserve fundamental rights of the people belonging to poor and marginalised sections of the society.

4 (1982) 3 SCC 235.

5 *Id.*, para 2.

6 *Ibid.*

7 *Supra* note 1.

The second phase of PIL started sometime in 1980s and it related to the courts' innovation and creativity, where directions were given to protect ecology and environment. There are a number of cases where the Supreme Court tried to protect forest cover, ecology, and environment and orders have passed in that respect. The Supreme Court has a regular forest bench and regularly passes orders and directions regarding forest cover, illegal mining, destruction of marine life, and wildlife *etc.* The Supreme Court paid special attention to probeair pollution, water pollution, and environmental degradation and passed a number of directions and orders to ensure that environment, ecology and wildlife should be saved, preserved and protected. The scale of injustice occurring on Indian soil was catastrophic. Hundreds of thousands of factories were functioning without pollution control devices. Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Every day millions of litres of untreated raw effluents are dumped into rivers and millions of tons of hazardous waste are dumped on the Earth. Environment has become so degraded that instead of nurturing the people, it is poisoning them. In this scenario, in a large number of cases the Supreme Court intervened in the matter and issued directions. The courts because of vast destruction of environment, ecology, forests, marine life, wildlife, *etc.*, gave directions in a large number of cases in the larger public interest. The courts made a serious endeavour to protect and preserve ecology, environment, forests, hills, rivers, marine life, wildlife, *etc.* Environmental PIL has emerged because of courts' interpretation of Article 21 of the Constitution.<sup>8</sup>

During 1990s, Supreme Court further expanded the ambit and scope of PIL. High courts followed the Supreme Court and passed a number of judgments, orders or directions to unearth corruption and maintain probity and morality in governance of the State. Probity in governance is a *sine qua non* for an efficient system of administration and for development of the country and an important requirement for ensuring probity in governance is absence of corruption. This broadly is called as the third phase of PIL.<sup>9</sup>

It is important to note that though the Indian courts may have taken some inspiration from group or class interest litigation of the United States and other countries but the shape of the PIL as it is seen now is predominantly indigenously developed jurisprudence. The PIL as developed in various facets and branches is unparalleled. Indian courts by their judicial craftsmanship, creativity, and urge to provide access to justice to the deprived, discriminated and otherwise vulnerable sections of society have touched almost every aspect of human life while dealing with cases filed under the label of PIL. Supreme Court in *Akhil Bharatiya Soshit Karamchhari Sangh (Railways) v. Union of India*<sup>10</sup>, emphasised, that,

...our current processual jurisprudence is not individualistic Anglo-Indian mould. It is broad based and people oriented and envisions

8 *Ibid.*

9 *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402.

10 (1981)1SCC 246.

access to justice through class action, ‘public interest litigation’ and ‘representative proceedings’. Indeed little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of cause of action and person aggrieved and individual litigation is becoming obsolescent in some jurisdictions.

The process of PIL, in the post-pandemic phase, during 2023 has witnessed the creativity of the Supreme Court in all the three areas of PIL as has been seen above. The three phases have witnessed crests and falls over the decades with the year 2023 being dominated by PIL focusing on personal liberties and human dignity. While PILs on policy and governance matters and environment lagged, gender-inclusion and privacy took centre-stage. The Supreme Court took a step forward in rights of the LGBTQIA+ community while toeing the line of separation of powers. At the same time, PILs for better enforcement of laws addressing gender-offences have seen decisive progress. Although most PILs on policy matters did not see favourable results, the Supreme Court did reiterate the limits of executive action in a number of cases.

### III GENDER JUSTICE

In the area of gender justice, one of the most important rulings that Supreme Court delivered was *Supriyo v. Union of India*. In the background of a debate regarding the civil rights of LGBTQ and Queer community arose the question as to whether the right to marry is fundamental right or not. Discussing the provisions of the Constitution, the authority of the Parliament to make a law on the subject, and the provisions of Special Marriage Act 1954 (SMA), Supreme Court held that there was no fundamental right to marry and that the Supreme Court could not enterjudicial legislation to read words into the SMA 1954, and make it a gender-neutral legislation. The court left it to Parliament to undertake this process. The court also upheld the constitutional validity of Section 4 of the SMA, which only recognizes marriages between heterosexual couples. In a 3:2 split verdict, the majority upheld the ‘right to relationship’ for queer couples, but it also opined that the judiciary could not confer a right to marry in the absence of a statute. Supreme Court went on to discuss the concept of marriage, holding that there is no universal concept of marriage and that different religions may have different understandings of marriage, including different type of practices within the community. While each individual is entitled to their own conception of marriage, a universal conception of marriage, its purpose, and content would be difficult to encapsulate in an exhaustive enumeration. Consequently, the argument advanced by the respondents that the very conception of marriage does not permit queer individuals to marry cannot be accepted. Each religion, each community, each couple defines the institution of marriage for itself. The queer community is just as much a community as any other, though perhaps not in the traditional sense in which the term is used with respect to customs which govern marriage.

In contrast, the dissenting opinion recognized ‘civil unions’ formed between queer (“LGBTQIA+”) individuals. As to justice to LGBTQ and Queer community, Supreme Court went on to issue variety of directions in terms of ensuring that the queer community is not discriminated against because of their gender identity or sexual orientation; that there is no discrimination in access to goods and services to the queer community, which are available to the public; that steps are taken to sensitise the public about queer identity, including that it is natural and not a mental disorder; that hotlines are established so that the queer community can contact when they face harassment and violence in any form; that governments establish and publicise the availability of ‘safe houses’ or Garima Grihas in all districts to provide shelter to members of the queer community who are facing violence or discrimination; that “treatments” offered by doctors or other persons, which aim to change gender identity or sexual orientation are ceased with immediate effect; that inter-sex children are not forced to undergo operations with regard only to their sex, especially at an age at which they are unable to fully comprehend and consent to such operations and so on.

Supreme Court went on to issue directions to the Police machinery specifically, as there have been undue harassment of the LGBTQ and Queer Community in the hands of the police. The court directed that there shall be no harassment of queer couples by summoning them to the police station or visiting their places of residence solely to interrogate them about their gender identity or sexual orientation; that they shall not force queer persons to return to their natal families if they do not wish to return to them; that when a police complaint is filed by queer persons alleging that their family is restraining their freedom of movement, they shall on verifying the genuineness of the complaint ensure that their freedom is not curtailed, and that when a police complaint is filed apprehending violence from the family for the reason that the complainant is queer or is in a queer relationship, they shall on verifying the genuineness of the complaint ensure due protection.

#### IV SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment at workplace has been one of a stumbling blocks in enjoining the larger section of population in the workforce of the country. And after Vishakha, the Parliament of India has enacted the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 for the purpose of ensuring that the sexual harassment at workplace is eliminated to ensure justice to the women workforce. However the facts on the ground remain murky even today and in 2023 the matter was brought before the Supreme Court by way of a PIL in the case of *‘Initiatives for inclusion Foundation v. Union of India.’* The Supreme Court has issued a slew of directions to the Union government and all State/UT governments to ensure the effective implementation of the provisions of the Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act) read with its Rules. Significant among them is the mandatory direction issued by the Court that the States and Union Territories must appoint a “District Officer” as per Section 5 of the Act. Though Section 5 says that the appropriate government may notify a District Magistrate or Additional District Magistrate

or the Collector or Deputy Collector as a District Officer, the Court read this as a mandatory condition. The court observed that “treating Section 5 as a directory would leave a gaping hole in the otherwise clearly delineated workflow and redressal mechanism, and the efficacy of this legislation, as a result, falls flat.”

#### V POCSO: PROTECTING CHILDREN FROM SEXUAL OFFENCES

Protection of Children from Sexual offences has been one of a major concerns of the courts during last one decade or so and in the cases of sexual offences against children the role of support persons is always very crucial. In the case of *Bachpan Bachao Andolan v. Union of India*,<sup>11</sup> the bench comprising Justices S Ravindra Bhat and Justice Aravind Kumar was hearing a petition filed by Bachpan Bachao Andolan which had raised issues related to protection provided to victims under the Protection of Children from Sexual Offences (POCSO). The court’s order revolves around the appointment and qualifications of support persons, focusing on their critical role in guiding and aiding victims through the complex legal process. The support person is responsible for accompanying the child during the recording of statements, medical examinations, and depositions and assisting in all other interactions at the investigation, pre-trial, and trial stages. However, the mandate for a “support person”, as envisaged under the POCSO Rules, remains unfulfilled. The court noted that a report submitted in the case, *Alarming Rise in the Number of Reported Child Rape Incidents, In re* in 2019 showed that a support person had been appointed only in 4% of POCSO cases. In this backdrop, the Court issued certain directions to the State of Uttar Pradesh (since the case was related to an incident in UP). Furthermore, the Ministry of Women and Child Development has been entrusted with the task of notifying the National Commission for Protection of Child Rights (NCPCR) about the judgment and its obligations. NCPCR is also required to file a status report to the Court outlining the progress of all the States in framing guidelines as per Section 39 of the POCSO Act.<sup>12</sup>

In another similar case which related to the importance of support persons for victims under POCSO Act, the Supreme Court of India in “*We the Women of India v. Union of India*,”<sup>13</sup> reiterated that the State has an obligation to provide “support persons” as per the POCSO Act to child victims of sexual offenses, and the appointment of support persons cannot be made optional. The need for support persons should not be left to the discretion of the parents of the child victims. Under Protection of Children from Sexual Offences Act, 2023, there is a need for comprehensive guidelines regarding the engagement of support persons in child welfare cases. The guidelines, to be finalized within eight weeks, are expected to consider various factors, including the establishment of a uniform standard of education for support persons. The court discourages the prevalent practice of limiting support persons’ engagements to a specific time frame and emphasizes the importance of providing reasonable remuneration for support

11 WP(C) No. 427/2022.

12 *Ibid.*

13 WP(C) No. 1156/2021.

persons. Additionally, the guidelines propose the creation of an All India Portal and the maintenance of a panel of NGOs and support persons.

The court directed the National Commission for Protection of Child Rights (NCPCR) that it shall, after duly consulting the State Governments and the Government of Union Territories, formulate model guidelines, based on which States and Union Territories may frame their rules in respect of support persons under Section 39 of the POCSO Act. For that purpose, initially NCPCR may formulate draft guidelines which may be circulated to all the States and after due consideration of their comments and suggestions, might include a uniform standard of education of support persons for which the minimum qualification may be graduation with relevant experience in child psychology, social work or child welfare, *etc.*; general practices of limiting engagements of support persons to number of cases to a particular time limit of three years or five years should be avoided. A suggestive uniform policy should be framed eventually leading to encadrement of such persons in the concerned ministry at the appropriate stage; the reasonable remuneration to be paid to the support persons commensurate with the work and functions to be discharged by them; creation of an All India Portal which will be accessible to all individuals and organizations such as JJBs and individual CWCs, which can list out the details of all support persons available in the concerned States and Union Territories; and a panel to be maintained by each State in respect of NGOs and support persons, whose services may be availed by the CWCs/JJBs.<sup>14</sup>

#### VI FUNDAMENTAL RIGHTS

Fundamental rights has been one of those areas where Supreme Court of India has used the process of PIL the most, including creating and interpreting new supporting rights by interpreting the existing rights in the Part-III of Indian Constitution. Such rights have come to known by the name 'rights by emanation.' In an case where proviso to Section 10 (26AAA) of Income Tax Act, has excluded the Sikkimese women from the exemptions granted under the impugned provision who marries a non-Sikkimese men the court found it as taking away the women's identity by the mere factum of being married to a non-Sikkimese men and observed that this is a stark example of an unconstitutional sex-based discrimination. In *Association of Old Settlers of Sikkim v. Union of India*,<sup>15</sup> the Supreme Court held that excluding Sikkimese woman merely because she marries a non-Sikkimese after April 1, 2008 from exemption provision under Section 10(26AAA) Income Tax Act is totally discriminatory and thus unconstitutional. A woman is not a chattel and has an identity of her own, and the mere factum of being married ought not to take away that identity,<sup>16</sup> the bench of Justices M R Shah and B V Nagarathna observed.

14 WP(C) No. 1156/2021.

15 WP (C) No. 59 of 2013.



Dignity of Individual, has been an important attribute of right to life and liberty under article 21 of Indian Constitution and there have been cases where Supreme Court has sought to protect the dignity of an individual in the face of attacks in the press and media. In *Reepak Kansal v. Union of India*,<sup>17</sup> a PIL was filed in 2020 by Reepak Kansal in the backdrop of the coverage of Sushant Singh Rajput case which had sought various directions “to restrict assassination of dignity of an individual by broadcasting channels in the name of freedom of press”. The petitioner also sought directions to restrict media trial interfering with the administration of justice. Another relief which was sought in the petition was direction “to stop the misuse of airwaves by these broadcasting electronic channels in the name of media, press and journalism.”<sup>18</sup> The court found the writ too broad and general and therefore declined to intervene and rejected the writ petition.

Though not many cases on environmental matters were decided by the Supreme Court during 2023, nevertheless a crucial judgement on the subject was delivered by the court in *MC Mehta v. Union of India*,<sup>19</sup> wherein a plea was brought before the court for removing restrictions on air traffic to city of Agra, which houses the legendry Taj. In December 2019, while granting permission to the Airport Authority of India to construct an additional terminal at the Agra airport, the Supreme Court had imposed a restriction that the air traffic should not be increased. The restriction was imposed to preserve the Taj Mahal monument. The bench comprising Justices Sanjay Kishan Kaul, Abhay S. Oka and JB Pardiwala removed the restriction for additional flights, after allowing an application filed by the Airports Authority of India. The order was passed in the *MC Mehta v. Union of India* case, where the court has passed several orders on environmental issues across the country.

A case of unnecessary hysterectomies of women belonging to SC and ST communities was brought before the Supreme Court by *Narendra Gupta v. Union of India*,<sup>20</sup> highlighting the fact that in the States of Bihar, Chhattisgarh and Rajasthan, in particular, “unnecessary hysterectomies” were carried out under the Rashtriya Swasthya Bima Yojana as well as other government schemes related to healthcare. The petition also highlights the involvement of private hospitals in performing such hysterectomies. The petitioner also submitted that most women who were subjected to hysterectomies of this kind belonged to the Scheduled Castes, Scheduled Tribes, or Other Backward Communities. The court emphasised that the right to health is an intrinsic element of the right to life under Article 21 of the Constitution. Life, to be enjoyed in all its diverse elements, must be based on robust conditions of health. There has been a serious violation of the fundamental rights of the women who underwent unnecessary hysterectomies. The court

16 *Ibid.*

17 WP (C) No(s). 762 & 1316/2020.

18 *Ibid.*

19 WP(C) No. 13381/1984 PIL.

20 Writ Petition (Civil) No. 131 of 2013.



directed that the Union government shall take all necessary steps in accordance with the guidelines to effectuate the public interest which is sought to be achieved. All the States and Union Territories must take stringent action for blacklisting hospitals once it is detected that any unnecessary hysterectomy was carried out or that the procedure was taken recourse to without the informed consent of the patient. We direct that necessary action be taken in accordance with law. The court also directed for the Constitution of National and State Hysterectomy Committees immediately for effective monitoring. The court approved a broad national action plan preventing the occurrence of undue hysterectomies in future.

The cases of euthanasia and right to die with dignity have come to the Supreme Court during recent decades and the Supreme Court has been giving variety of judgments and issuing guidelines consistently. In *Common Cause v. Union of India*,<sup>21</sup> the court confronted the issue once again in its recent effort at giving desired direction to the process. Going back in time, on July 19, 2019, the Indian Society for Critical Care filed a miscellaneous application requesting a five-Judge Constitution Bench to modify some of the guidelines prescribed in the 2018 Judgment. They claim that the procedure for terminally ill patients to exercise their right to die is extremely cumbersome and requires streamlining. On January 24, 2023, a Constitution Bench streamlined the guidelines for withdrawal of treatment of terminally ill patients. The alteration in the guidelines was undertaken in response to the Supreme Court's judgement in *Common Cause v. Union of India* (2018) which held that the right to die with dignity is a fundamental right under Article 21.

In its 2018 judgement, the court observed that an individual's right to execute 'Advanced Medical Directives' (AMDs) is an assertion of the right to bodily integrity and self-determination. An AMD is a document containing end-of-life instructions to be used when a patient is no longer able to communicate their wishes. The court had laid down an extensive procedure for validating an AMD, requiring the creation of two medical boards, one by the treating hospital and the other by the district collector. Doctors on these boards had to have 20 years of experience in the field.

In its January 2023 judgement,<sup>22</sup> the court tweaked these requirements and held that the doctors will only require five years of experience to be part of a medical board. The requirement of having the Chief Medical Officer on the second board was removed. The requirement of having the AMD countersigned by a judicial magistrate of the first class was dispensed with. Lastly, both boards were instructed to arrive at a decision "preferably" within 48 hours of the case being referred to it. Thus, Supreme Court makes it easier for persons to opt for passive euthanasia.

#### VII SUO-MOTU PUBLIC INTEREST LITIGATION

*Suo Motu* Public Interest Litigation has been one of an important evolution, as part of court's efforts at addressing significant public interest issues and

21 Miscellaneous Application No. 1699 OF 2019 in Writ Petition (Civil) No. 215 Of 2005.

protecting fundamental rights of common man in India. The issues of bail is one of those areas where the courts have found new issues confronting it almost every single day. In *Re-Police Strategy for Grant of Bail v. Respondent(s)*<sup>23</sup>, the matter was brought before the court by *Amicus Curiae*, Advocate General Gaurav Aggrawal. Referring to a report submitted by NALSA, it was stated that, “There are 5000 undertrial prisoners who have been in jail despite grant of bail, out of which 2357 have been provided legal assistance and now 1417 persons have since been released.” It was submitted that this was just a tip of the iceberg and the cases of unjust imprisonment continue to increase and more and more unsuspected people languish in jails, which amounts to violation of their vital rights available under the sacred text of the Constitution.

In its order during January 2023, the Supreme Court issues seven directions to avoid delay in release of prisoners after getting bail. One notable guideline is this – “If the bail bonds are not furnished within one month from the date of grant of bail, the concerned Court may *suo moto* take up the case and consider whether the conditions of bail require modification/ relaxation”. During July 2023, the court further directed that while granting bail, the courts should impose realistic conditions of bail considering the economic and social position of the undertrial prisoners or else the act of grant of bail does not subserve its purpose.

In another *suo motu* case of *In Re Prajwala Letter dated February 18, 2015 Videos of Sexual Violence and Recommendations*,<sup>24</sup> the Supreme Court of India went on to close the PIL filed for controlling indiscriminate circulation of child pornography and videos of gang rape and rape through WhatsApp and other social media after the expert committee constituted by the court for the matter, submitted its report on how it proposes to address the issue. The Court had initiated this *suo motu* PIL in 2015 based on a letter sent by an NGO named Prajwala to the then CJI HL Dattu. The court, while closing the proceedings, stated:<sup>25</sup>

...substantial issues have been resolved. We find that it will not be necessary for this Court to monitor this issue further, as various technical concerns are involved which could not be monitored by this Court. If any of the parties are aggrieved by the non-compliance of any of the provisions, they are always at the liberty to bring it to the notice of the Union of India, which shall take into consideration, these aspects and make an attempt to resolve this issue. If issues still remain unresolved, the parties are at liberty to approach this Court to seek appropriate reliefs.

22 Miscellaneous Application No. 1699 of 2019 In Writ Petition (Civil) No. 215 OF 2005.

23 SMW(CrI) No. 4/2021.

24 SMW(CRL.) NO. 3/2015.

25 *Ibid.*

## VIII SHAPING PUBLIC POLICY

It is common knowledge that Supreme Court has helped in shaping public policy on variety of issues and its decisions have a significant impact on public policy. And due to all this there has also been an spurt on filing public interest litigation provoking the Supreme Court into action and intervening on public policy issues which lie within the domain of the executive government. But the apex court has always played safe and 2023 is an stark example of that. In *Agnosos Theos v. Union of India*,<sup>26</sup> where a PIL was filed seeking setting up of internal security council to supervise National and State investigative agencies, the Supreme Court dismissed a PIL that sought the setting up of a National Internal Security Council to deal with organised crime in the country such as smuggling, *inter state* trafficking, cyber crimes and large scale political violence. The PIL also sought for all national and state level investigation agencies to be brought under the control of such a body. The apex court dismissed the PIL on the ground that the reliefs sought for were in the nature of policy and in the domain of the legislature and hence the writ jurisdiction of the court could not be exercised for the same.

In *Ashwini Kumar Upadhyay v. Union of India*,<sup>27</sup> where the petitioner has brought a plea to raise the age of marriage for women up to 21 years, Supreme Court dismissed the PIL observing that the matter is best left to Parliament to decide the issue. The petitioner argued that the distinction between the age of marriage for men (21 years) and women (18 years) was arbitrary and violated Articles 14, 15, and 21 of the Constitution. Upadhyay sought an increase in the age of marriage for women to 21 years, which would be on par with men. However, the bench clarified that the court cannot issue a *mandamus* for parliament to legislate, and that any change in legislation should be left to the Parliament. Accordingly, the petition was dismissed.

In *Sunil Ahya v. Election Commission of India*,<sup>28</sup> the PIL was filed for the purpose of mandating the independent audit of source codes of EVMs. The Supreme Court refused to entertain a PIL seeking an independent audit of source codes of Electronic Voting Machines (EVMs). The bench comprising CJI DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra noted that the matter concerned sensitive policy issues and thus, the court was not inclined to interfere with the same. It was observed, “Petitioner places no actionable material before this court to show that ECI has acted in breach of its constitutional mandate. No material has been placed to show that ECI is not fulfilling its mandate.” In *Ripudaman Singh v. Union of India*,<sup>29</sup> wherein the PIL was filed for the purpose of seeking inclusion of Rajasthani Language in the eighth schedule, Supreme Court declined to intervene saying that whether a language should be included in the Eighth Schedule to the

26 WP (C) diary No. 22892/2023

27 TC (C) No. 3/2023.

28 WP (C) No. 826/2023.

29 WP (C) No. 387/2023

Constitution is apolicy decision which has to be taken by the appropriate constitutional authority.

As political disputes have been on the increase across the spectrum and government's actions/actions of constitutional authorities are questioned more often than earlier, Supreme Court has been alert in adjudging the merits of the case. A petition filed by the NGO Lok Prahari<sup>30</sup> challenged Rule 39AA of the Conduct of the Election Rules 1961. As per Rule 33A, in Rajya Sabha elections, an elector, who is a member of apolitical party, has to allow the authorized agent of the political party to verify to whom the vote has been cast before the ballot paper is put inside the ballot box. If the elector refuses to show the ballot paper to the authorized agent, then it will result in the cancellation of the vote. The petitioner contended that Rule 39AA(1) was violative of Article 80(4) and Article 14 of the Indian Constitution and was also contrary to Section 123(2) of RPA. "This lies purely in the realm of legislative policy. There is nothing per se discriminatory in the provision. Parliament is entitled to regulate the manner in which nomination papers should be presented and the requirements for a valid nomination", the bench held while rejecting this challenge. In another similar policy issue where the petitioner has sought two years cooling off period for retired judges' post retirement appointments,<sup>31</sup> the Supreme Court dismissed the petition that the matter is best left for the individual discretion of the judges. The petitioners sought a declaration that it would be desirable – for the protection of the public perception about the independence of the judiciary – that there should be a two-year-long cooling-off period after retirement after which former judges of Supreme Court and high courts may accept political appointments from the government. As an interim measure during the pendency of the petition, the lawyers' collective also asked the top court to 'request' retiring judges to not accept any political appointment voluntarily for a period of two years. Court pronounced, "The issue of whether a retired judge should accept any office has to be left to the better sense of the judge concerned, or a law has to be enacted, which cannot be a subject matter of this court's directions under Article 32 of the Constitution. Petition dismissed."

#### IX SCRUTINY OF STATE ACTION

Scrutiny of State Action has always been a favourite area for Public Interest Litigators throughout the evolutionary phase of PIL. And the Supreme Court has always been on the toes in taking a judicious approach to the matters in issue. In *Vivek Narayan Sharma v. Union of India*,<sup>32</sup> wherein the demonetization of bank notes was in question, Supreme Court upheld the decision of demonetization and declared it to be lawful with a 4:1 majority. Held that the Central Government has the power to demonetize all series of bank notes of a particular denomination under Section 26(2) of the RBI Act, provided that there commendation has to be made by the Central Board. The process has to be initiated by the Central Board.

30 *Lok Prahari v. Union of India*, WP(C) No. 1141/2020 PIL.

31 *Bombay Lawyers Association v. Union of India*, Diary No. 23007 of 2023.

32 WP (C) No. 906/2016: 2023 SCC OnLine SC 1.

The impugned notification also satisfies the test of proportionality and, therefore, cannot be struck down on the said ground. The Court also laid down that there is an inbuilt safeguard in Section 26(2) of the RBI Act itself hence there is no excessive delegation of power. However, Justice B.V. Nagarathna disagreed with all of these and formed a dissenting opinion.

In *Jaya Thakur v. Union of India*,<sup>33</sup> wherein the petitioner has challenged the extension of the tenure of CBI and ED director by amending the Delhi Police Establishment Act and Central Vigilance Commission Act, by way of an ordinance, Supreme Court upheld the Ordinances in question. It might be useful to note that in *Common Cause v. Union of India* (2021), the Supreme Court had issued a *mandamus* against the tenure extension of incumbent ED Director Sanjay Kumar Mishra. But then the government brought in the Delhi Special Police Establishment (Amendment) Ordinance and the Central Vigilance Commission (Amendment) Ordinance to extend the tenure of the Directors of the CBI and ED. In *Jaya Thakur v. Union of India*,<sup>34</sup> the amendments were upheld by the SC, even as it declared that Mishra would have to vacate office on 31 July 2023. Later still, at the Union's request, the Supreme Court permitted the extension of his tenure until September 15, 2023.

*Anoop Baranwal v. Union of India*,<sup>35</sup> was one of a very crucial decisions which attracted the gaze of public eye tremendously. It was in 2015 that Anoop Baranwal had filed a Public Interest Litigation stating that the existing system for appointing members of the Election Commission of India (ECI) was unconstitutional. The petition claimed that over time, the Executive's power to make appointments degraded the ECI's independence. The PIL also asserted that the appointment system violated Article 324(2) of the Constitution. On 23 October 2018, Chief Justice Ranjan Gogoi and Justice S. K. Kaul referred the matter to a 5-judge Constitution Bench. The court tagged similar petitions filed by Ashwini Kumar Upadhyay, Association for Democratic Reforms and Jaya Thakur to this case. The Bench began hearing the case on November 17, 2022 and reserved its judgement on November 24, 2022. On March 2, 2023, a Five-Judge Constitution Bench led by Justice K.M. Joseph modified the process for appointing members of the Election Commission of India (ECI). The Bench held that a committee comprising the Prime Minister, the Leader of the Opposition and the Chief Justice of India will advise the President on the appointments of Election Commissioner of India. Previously, the President appointed the Chief Election Commissioner and Election Commissioners. The court mandated that this committee will function until the Parliament drafts an alternative law on the subject. In his concurring judgment, Justice Ajay Rastogi added that the grounds for removing Election Commissioners should be the same as those for the Chief Election Commissioner (which is the same as a Judge of the Supreme Court). He reasoned that Election Commissioners must also be free from 'all external political interference' like the Chief Election

33 WP (C) No. 456/2022: 2023 INSC 616.

34 *Ibid.*

35 2023 SCC OnLine SC 216.

Commissioner, so the same provisions must be extended to them. Regarding the petitioner's plea for an independent Secretariat for the ECI and funding from the Consolidated Fund of India, the court refrained from interfering. The court stated that details regarding expenditure are policy matters and outside the purview of the Supreme Court. Still, it urged Parliament to address the matter seriously and make necessary changes. However, in August, the government tabled a new bill that proposed that the three-member nomination committee comprise two members of the ruling party and one from the opposition. It was a direct response to the decision of the Supreme Court.

#### X ABROGATION OF ARTICLE 370

Abrogation of Special status for the State of Jammu and Kashmir and virtual elimination of article 370 of the Indian Constitution of India has been one of the important milestones for the Parliament of India, which has also been politically very controversial decisions of the Government of India. In *Re Article 370 of the Constitution*,<sup>36</sup> the Supreme Court dealt with the entire controversy in detail and upheld the validity of the Constitutional Order 272 and 273 by the President of India in his exercise of power under article 370.

Article 370 of the Constitution of India incorporated special arrangements for the governance of the State of Jammu and Kashmir. The President issued Constitutional Orders 272 and 273 which have the effect of applying the entire Constitution of India to the State of Jammu and Kashmir and abrogating article 370. Contemporaneously, Parliament enacted the Jammu and Kashmir Reorganisation Act 2019, which bifurcated the State into two Union territories. Number of petitions were filed in the Supreme Court, questioning the competence of Government of India and Parliament of India in passing Constitutional Orders 272 and 273 on the grounds, *inter alia*, that State of Jammu and Kashmir had an element of Sovereignty which could not be violated, that President of India did not have the power to issue such a Constitutional order, that the order of the President of India was *mala-fide*, that the proclamation of the President was done without consulting the Government of the State, which is unconstitutional and so on.

Supreme Court gave a historic judgment and dismissing all the petitions held that the State of Jammu and Kashmir does not retain any element of sovereignty after the execution of the Instrument of Accession and the issuance of the Proclamation dated November 25, 1949 by which the Constitution of India was adopted. The State of Jammu and Kashmir does not have 'internal sovereignty' which is distinguishable from the powers and privileges enjoyed by other States in the country. Article 370 was a feature of asymmetric federalism and not sovereignty. Supreme Court specifically held that Article 370 was a temporary provision of the Constitution of India and the same can be garnered from the historical context for the inclusion of Article 370 and the placement of Article 370 in Part XXI of the Constitution.

36 WP (C) No. 1099/2019: 2023 INSC 1058.

Supreme Court further held that the exercise of power by the President under Article 370(1)(d) to issue Constitutional order 272 is not *mala fide*. The President in exercise of power under Article 370(3) can unilaterally issue a notification that Article 370 ceases to exist. The President did not have to secure the concurrence of the government of the state or Union Government acting on behalf of the state government under the second proviso to Article 370(1)(d) while applying all the provisions of the Constitution to Jammu and Kashmir because such an exercise of power has the same effect as an exercise of power under Article 370(3) for which the concurrence or collaboration with the State Government was not required. paragraph 2 of constitutional order 272 is issued by the President in exercise of power under article 370(1)(d) applying all the provisions of the Constitution of India to the State of Jammu and Kashmir is held to be constitutionally valid. Such an exercise of power is not *mala-fide* merely because all the provisions were applied together without following a piece-meal approach.

Supreme Court emphasised that the President had the power to issue a notification declaring that Article 370(3) ceases to operate without the recommendation of the Constituent Assembly. The continuous exercise of power under Article 370(1) by the President indicates that the gradual process of constitutional integration was ongoing. The declaration issued by the President under Article 370(3) is a culmination of the process of integration and as such is a valid exercise of power. Thus, Constitutional order 273 is valid.

Responding to the allegation that the State of Jammu and Kashmir had its own Constitution and therefore the provisions of Indian Constitution could not be applied to the State of Jammu and Kashmir *in toto*, Supreme Court observed that the Constitution of India is a complete code for constitutional governance. Following the application of the Constitution of India in its entirety to the State of Jammu and Kashmir by Constitutional order 273, the Constitution of the State of Jammu and Kashmir is inoperative and is declared to have become redundant.

#### XI SOCIAL JUSTICE

The element of social justice has been one of the most favourite grounds for Supreme Court of India in entertaining the public interest litigation from the very beginning. In fact, the idea of social justice has been one of the triggering factors for PIL jurisdiction in the Supreme Court and high courts in India. A powerful combination of PIL has been a crucial tool in promoting social justice in India and social justice advocates have been able to bring about significant positive changes in India, promoting a more equitable and just society.

Manual scavenging has been one of the scars over the social justice movement in India, which has drawn the attention of social reformers for centuries and has attracted the PIL jurisdiction of the Supreme Court in a big way. The matter of manual scavenging came before the Supreme Court in *Balram Singh v. Union of India*,<sup>37</sup> wherein the writ petitions seeking directions to Union of India and all the



States and Union Territories to implement provisions, inter alia, of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 ('Act, 1993') and Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('Act, 2013'). The division bench of S. Ravindra Bhat and Aravind Kumar, JJ. gave few directions. The court noted that in 1993 India took a significant step by prohibiting the employment of manual scavengers responsible for the daily manual emptying of certain types of dry toilets. Subsequently, the Parliament enacted the Act 2013, which extended and clarified its scope to include insanitary latrines, ditches, and pits. However, the petitioner claimed that the government has not implemented essential provisions of these statutes. Regrettably, manual scavenging persists despite these legislations. Petitioner prayed that Acts of 1993 and 2013 should be implemented in letter and spirit, and to do so, it is necessary to impose a blanket ban on manual scavenging while simultaneously ensuring adequate rehabilitation and employment opportunities for those currently engaged in these practices.

The Bench said the 2013 Act criminalizes manual scavenging and provides rehabilitation mechanisms to ensure that manual scavengers are emancipated. The first step towards rehabilitation the 2013 Act, is the identification of manual scavengers through a survey. After their identification by a survey, a final publication of the manual scavengers is to be published under Section 11(6) of the Act. On publication of the list, the emancipatory provision under Section 11(7) read with Section 6(2) takes effect. It declares that the manual scavengers stand discharged from any obligation to work as manual scavengers. This provision is the heart of the law, this declaration frees manual scavengers from the clutches of their historically oppressive professions. The law consequently empowers them through the process of rehabilitation. Therefore, the 2013 Act, including the provisions, must be interpreted as being in furtherance of fraternity, assuring the dignity of the individual.

There have been several other matters in which Supreme Court exercised its PIL jurisdiction to ensure that justice is done to all sections of society. In *Temple of healing v. Union of India*,<sup>38</sup> wherein the issues relating to adoption process were in question, the court went into the statistics between 2013 and 2023, the court highlighted the annual figure of total adoptions which ranged between 3158 (2022-23) to 4362 (2014-15), the CARINGS portal reflected registrations by 33,967 Prospective Adoptive Parents ('PAPs') and children registered as on August 1, 2023 were 7107 comprising of 6556 children without any special needs and 1451 children with special needs. Among those, only 2,118 children were considered to be 'legally free for adoption' as on August 1, 2023. In an order in the matter dated November 20, 2023, Supreme Court issued directions to expedite adoption process and directed states to conduct drives to identify children and establish adoption agencies.

## XII MISCELLANEOUS MATTERS

An interesting aspect of PIL matters during the year 2023 was that some issues like, animal rights, renaming of cities, and objections to the depiction of Hindu Deities in cinematograph films *etc.*, also came to the fore. On the questions of animal rights, welfare and permissible activities in sports involving use of animals, the Supreme Court in *Animal Welfare Board v. Union of India*,<sup>39</sup> upheld the practice of Jallikattu as per the 2017 Tamil Nadu Amendment to the Prevention of Cruelty to Animals Act, 1960. The case was heard by a Constitution Bench led by Justice K.M. Joseph over six days in November and December, 2022. Justice Aniruddha Bose authored the unanimous judgement. The Supreme Court delivered a unanimous judgement upholding the practice of Jallikattu, Kambala and Bailgada Sharyat. The Supreme Court was dealing with petitions challenging the Tamil Nadu, Karnataka and Maharashtra amendments to the Prevention of Cruelty Against Animals Act, 1960 which allowed the practices of Jallikattu. The court went on to state in clear terms that the idea of fundamental rights under the Constitution cannot be extended to animals and in view of the cultural practices of the states involved in the case. The court appreciated that the amendments in question have minimised the cruelty to animals used in the process of Jallikattu.

Supreme Court received several matters relating to RTI process under its PIL jurisdiction during the year 2023. For example, in *Kishan Chand Jain v. Union of India*, Supreme Court has emphasised the duty of the Central Information Commission and State Information Commissions to ensure that the mandates outlined in Section 4 of the Right to Information Act are strictly adhered to. The bench, comprising Justice DY Chandrachud, Justice PS Narasimha, and Justice JB Pardiwala, highlighted that while section 3 of the Act affirms the citizens' 'right to information', Section 4 recognises the corresponding obligation of public authorities. The judgement stemmed from a PIL filed under article 32 seeking directions for better functioning of the State Information Commissions, urging the implementation of Section 4 of the RTI Act.

The court underscored the principle of public accountability and its significance in shaping the dynamics between 'duty bearers' and 'right holders'. It was observed that the Right to Information, rooted in section 3, can only be effectively operationalised if it aligns with the obligations of public authorities outlined in section 4. The role of the Central and State Information Commissions, as demarcated in Chapters III and IV of the Act, was particularly stressed. Their powers and duties, as detailed in section 18, demand unwavering attention.

In an interesting case on a plea of chargesheet being a public document, should be uploaded on the website, Supreme Court in *Saurav Das v. Union of India*<sup>40</sup> held that chargesheet is not a public document and therefore the police and investigating agencies like CBI, ED *etc.*, cannot be directed to upload the chargesheets filed in cases on a public platform for easy access by the general

39 2023 SCC OnLine SC 661: AIR 2023 SC 2612.

40 WP (C) No. 1126/2022.

public. A bench comprising Justices MR Shah and CT Ravikumar held so while dismissing a PIL filed by RTI activist and investigative journalist Saurav Das. The court held that the direction in the Youth Bar Association case cannot be extended to chargesheets. The FIRs were directed to be publicly uploaded so that innocent accused are not harassed and they are able to get the relief from the competent court and are not taken by surprise. This direction cannot be stretched to the public at large so far as the chargesheets are concerned.

There have been cases of renaming the cities in the name of cultural icons and there also have been demands for renaming those cities which have been named after Muslim rulers. In *Ashwini Kumar Upadhyay v. Union of India*,<sup>41</sup> wherein the petitioner appearing as party-in-person, contended that many cities mentioned in scriptures are now named after Muslim rulers who invaded India. "A country cannot remain a prisoner of the past", observed the Supreme Court while dismissing a PIL seeking to rename historical cities which have been named after "foreign invaders." "The history of any nation cannot haunt the present and future generations to the point that succeeding generations become prisoners of the past", a bench comprising Justices KM Joseph and BV Nagarathna stated while affirming the secular nature of the country. "India, that is Bharat, is a secular country,"<sup>42</sup> the bench observed in the beginning of the order. During the hearing, the bench expressed a concern that the petitioner was pointing fingers at one particular community. In the order, the bench highlighted the concept of "fraternity" and how bonding between different sections of the society would lead to true harmony and a sense of nationhood. During the hearing, both the judges made an array of observations regarding how the petition is against secularism and that there are more pressing problems in the country to deal with.

In *Mamta Rani v. Union of India*,<sup>43</sup> where the PIL was brought for the purpose of raising a plea against the film "Adipurush", alleging that the movie's portrayal of Hindu deities violated the statutory provisions outlined in Section 5B of the Cinematograph Act, 1952. It was argued by the petitioner, that the film depicted the Hindu deities in a detestable manner. Dismissing the PIL seeking the revocation of the certificate granted by the Central Board of Film Certificate (CBFC) for the movie "Adipurush." The bench comprising Justice SK Kaul and Justice Sudhanshu Dhulia stated that it was inappropriate for the Supreme Court to interfere with film certifications based on the "sensitivities of each individual." Held, it is inappropriate to interfere with film certifications based on the sensitivities of each individual. The court should not become some kind of an appellate authority for the censor board.

PIL has played a crucial role in spearheading the movement for the development and extension of citizen's constitutional rights, for the protection of individual liberty and for strengthening the socio-economic fabric in compliance

41 WP (C) No. 190/2023.

42 *Ibid.*

43 WP (C) No. 713/2023.

with the declared constitutional objectives. There have been questions and objections as to the exercise of the PIL jurisdiction by the courts whereby, it is alleged that the courts tend to encroach on the authority of the other wings of the state system. Courts have been aware of the limitations and propriety of their role in a democratic framework and have played safe in ensuring that the judicial activism in the name of PIL does not manifest itself in judicial overreach. 2023 has been a year wherein the courts in the exercise of their PIL jurisdiction have played a constructive role in their attempt to remedy the constitutional imbalances, while at the same time confining themselves within their legitimate authority.

