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PUBLIC INTEREST LITIGATION

*Aman Hingorani**

I INTRODUCTION

WHILE THE Chief Justice of India, at the Full Court Reference held in the Supreme Court to pay homage to Pushpa Kapila Hingorani, had referred to her as "a true harbinger of justice to the voiceless" who "left behind a rich legacy of selfless *pro bono* fight for the under-privileged through PILs",[1] the Chief Justice of India stated at the Full Court Reference held to pay homage to Nirmal Hardasmal Hingorani as under:[2]

> …..Through championing the rights of the most marginalized and impoverished section of our society, Shri N. H. Hingorani has left behind his footprint on the sand of time that provide an inspiration to us all. With his late wife, the revolutionary Shrimati Kapila Hingorani, he made an unparalleled contribution to Constitutional Law and Fundamental Rights by filing the first ever Public Interest Litigation in India in Hussainara Khatoon's case. Together they filed and argued more than 100 Public Interest Litigation actions *pro bono*.
>
> Shri N. H. Hingorani championed the rights to equality and freedom not only in his capacity as an advocate, but also in his personal life. As a husband, he was a true feminist, and provided unflagging support to his successful partner….

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1 Full Court Reference held on Feb. 13, 2014 at the Supreme Court of India.

2 Full Court Reference held on Sep. 10, 2015 at the Supreme Court of India. For detailed discussion on the evolution and development of PIL, see S.P. Sathe & Sathya Narayan, *The World's most Powerful Court: Finding the roots of India's Public Interest Litigation revolution in the Hussainara Khatoon Prisoner's case* in *Liberty, Equality and Justice: Struggles for a New Social Order* (EBC Publishing (P) Ltd., Lucknow 2003); A Hingorani, "Indian Public Interest litigation: Locating Justice in State Law", XVII *Delhi Law Review* 159 (1995); C D Cunningham, "Public Interest Litigation in Indian Supreme Court: A Study in Light of the American Experience", 20 *JILI* 494 (1987); "*Personal Liberty*", XV *ASIL* 418 (1979).

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> Shri N. H. Hingorani has left behind him a legacy that can never really go away, for he will live on in the hearts and mind of us all…...

Hussainara Khatoon,[3] referred to by the Chief Justice of India, was filed on 11 January 1979 by Pushpa Kapila Hingorani as an emotional reaction to press articles highlighting the pitiable conditions of prisoners languishing in jail awaiting trial for cruelly long periods, at times exceeding the period they would have been in jail had they been tried, convicted and given maximum sentence and such sentence was to run consecutively. The Supreme Court, from the time of its conception till 1979, had functioned strictly within the common law parameters of adjudication. It was Nirmal Hardasmal Hingorani's novel idea to file, as an officer of the court and a citizen of the country, a petition before the Supreme Court under article 32 of the Constitution, based on press reports, to secure the release of the under trial prisoners who were unknown to them, and to assert that it was the constitutional obligation of the Supreme Court, as the constitutionally appointed protector of fundamental rights, to do so. This case led to the Supreme Court reading the fundamental right of speedy trial as being implicit in article 21 of the Constitution and to the immediate release of about 40,000 under trial prisoners.

Nirmal Hardasmal Hingorani was the one who drafted this very first Public Interest Litigation (PIL) petition and appeared, along with Pushpa Kapila Hingorani, in the matter. All the 100 odd PIL cases filed by them on behalf of almost all disadvantaged sections of society have been drafted by him. These cases included *Anil Yadav*[4] (the Bhagalpur Blindings case) and *Rudul Sah*[5] that led the Supreme Court to enlarge the scope of its constitutional powers under article 32 to investigate into the facts and to grant monetary compensation to victims of State lawlessness, *Kamlesh*[6] that required the Supreme Court to engage in policy matters relating to dowry crimes and resulted in the setting up of the crime against women cell, and *R C Narain*[7] that entailed the Supreme Court to virtually to take over the administration of the Ranchi Mental Asylum to check the death of a patient every two days due to inhuman conditions, and to subsequently declare the institution to be autonomous, frame its constitution and require the State to notify the same in the official gazette. While Pushpa Kapila Hingorani is widely known as the mother of PIL, Nirmal Hardasmal Hingorani was its father.

Hussainara Khatoon conceived a new judicial role that required the court to transcend the traditional judicial function of adjudication in the endeavour to protect fundamental rights of the disadvantaged sections of society lacking access to courts. PIL is a remedial jurisprudence and it is from such character of Indian PIL that all

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3 *Hussainara Khatoon* v. *State of Bihar,* AIR 1979 SC 1360.

4 *Anil Yadav* v. *State of Bihar*, AIR 1982 SC 1008; *Khatri* v. *State of Bihar*, AIR 1981 SC 928, 931, 1068.

5 *Rudul Sah* v. *State of Bihar*, AIR 1983 SC 1086.

6 *Kamlesh* v. *Union of India*, Writ Petition No. 8145 of 1981, Unreported

7 *R C Narain* v. *State of Bihar*, 1986 (Supp) SCC 576; AIR 1995 SC 208.

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S. No.	Public interest actions within common law paradigm	Indian public interest litigation
1.	There has to be a dispute or *lis* to activate the judicial process.	A typical PIL action lacks a *lis*; it is a remedial jurisprudence.
2.	Adversarial in nature.	Non adversarial in nature - collaborative, investigative.
3.	Passive role of judge, bound by pleadings and issues raised and evidence led, in order to adjudicate	Active role of judge, who can go beyond the pleadings, issues and evidence on record, to assume new roles.
4.	The court would decline relief if it requires the court to "legislate' or impinge on policy issues.	Should there be a vacuum in a given field of law or policy, the court would "legislate" or lay down necessary to do so to protect policy de novo if it feels it fundamental rights.
5.	Strict adherence to procedural law in order to ensure level playing field to both parties.	Flexibility in application of procedural law.
6.	Strict adherence to public policy doctrines like *res judicata*, estoppel, *laches*.	Public policy doctrines like *res judicata*, estoppels, *laches* are inapplicable.
7.	Only the aggrieved person can initiate the judicial process.	Relaxation of the principle of *locus standi* to enable any person acting *pro bono* to move the court on behalf of the section of persons lacking access to Courts on account of poverty or any other disability, and for realisation of diffuse and collective rights
8.	The petitioner is to prove the case through legally admissible evidence.	The PIL action can be based on press reports, telex or letter to the court and can be initiated even *suo moto,* though in recent years, the court is slow to act only on the basis of press reports, unsupported by research or data, particularly in cases relating to diffuse or collective rights.

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9.	Burden of proof is on the person making the allegation.	The petitioner is released from the burden of proving the allegation.
10.	The identity of the parties to the dispute is well defined.	There is typically an amorphous nature of parties.
11.	The petitioner is the *dominus litus*, and can withdraw his or her action following which the court is *functus officio*.	The petitioner is not *dominus litus*, and the court can continue the action should the petitioner withdraw his or her name from the action
12.	The court would be slow in issuing interim relief unless satisfied of *prima facie* case, balance of convenience and irreparable prejudice and injury that cannot be compensated in terms of money.	Grant of the relief sought in the petition through immediate and interim remedial orders.
13.	Based on the maxim – where is a right, there is a remedy.	Cohesion between rights and remedies is diluted. The court may be unable to provide remedies despite recognition of an inalienable fundamental right of every individual (like food, drinking water, shelter); or may give relief to the bewildered who lack a right (like provision of alternate accommodation to leprosy afflicted persons prior to eviction from their encroachment on government land).

its other norms flow. Indeed, there has been no other litigative strategy across the world that has delivered relief, in concrete terms, to the millions of marginalized and vulnerable in society. The distinctiveness of Indian PIL can, perhaps, be best illustrated by comparing it with other public interest litigative strategies, like class action, practiced within the common law system.

The trend that is apparent in the cases covered in this survey is that the Supreme Court and the high courts, while emphasizing the original purpose for which PIL was conceived, have applied stricter standards for judicial intervention in cases that relate to diffuse or collective rights. The annual survey on PIL for the year 2012 explains how cases relating to diffuse and collective rights, which affect the public at large and thereby confer standing on the public at large, could have been litigated as class actions or representative actions under order 1 rule 8 CPC

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1908, complete with the checks and balances of the traditional common law system.[8] The expansion of the scope of PIL to cover cases involving a diffuse or collective right enables an unscrupulous litigant to file a PIL ostensibly in public interest, but in fact to serve personal or private interest or with an oblique or extraneous motive, or merely for publicity. Such cases are at the cost of the poor, marginalized and vulnerable sections of society for whom PIL was originally conceived. Stricter standards on entertaining PIL pertaining to diffuse or collective rights might well be the way forward.

II NATURE AND SCOPE OF PIL

In *Jafar Imam Naqvi* v. *Election Commission of India*,[9] the PIL before the Supreme Court sought a writ of *mandamus* "commanding respondent to take stern action against everyone and anyone found guilty as per law in view of the ongoing activities of the accused politicians and political parties and to ensure protection of the security of Election Staff posted at Varanasi and of public at large of the entire country"; and a writ of mandamus "commanding respondent to withdraw the recognition given to such political parties resorting to illegal activities and to cancel the candidature of politicians found guilty before declaration of the Election Results". The grievance in the PIL related to speeches which had been delivered during the recently concluded election campaign by various leaders of certain political parties and their potentiality to affect the social harmony. The PIL asserted that such hate speeches were totally unwarranted and could endanger the safety and security of public at large and undermined the structuralism of democratic body polity. The Supreme Court formulated the question for consideration to be whether the court in exercise of power under article 32 of the Constitution should enter into the arena of effect and impact of election speeches rendered during the election campaign in a PIL. The court recalled that "public interest litigation was initially used by this court as a tool to take care of certain situations which related to the poor and under-privileged who were not in a position to have access to the court. Thereafter, from time to time, the concept of public interest litigation expanded with the change of time and the horizon included the environment and ecology, the atrocities faced by individuals in the hands of the authorities, financial scams and various other categories including eligibility of the people holding high offices without qualification." The court held that "it has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law, i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of the executive for whatsoever reason, the Court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum of legal regime to deal with a particular situation, the Court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation

8 Aman Hingorani, "Public Interest Litigation", XLVIII *ASIL* 724 (2012).

9 AIR 2014 SC 2537.

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to cover the field. Thus, direction can be issued only in a situation where the will of the elected legislature has not yet been expressed." The court took the view that the matter of handling hate speeches could be a matter of adjudication in an appropriate legal forum and might also have some impact in an election disputes raised under the Representation of People Act, 1951. Therefore, to entertain the petition as a PIL and to give directions would be inappropriate. A case pertaining to speeches delivered during election campaign could not be put on the pedestal of a real PIL.

In *Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*,[10] the PIL before the High Court of Rajasthan *inter-alia* sought a declaration that "the Galta Peeth/ Thikana, its temples and properties are public properties and not private or individual properties and it may be dealt with in the manner public properties are dealt with"; and the state government should be directed to take over control and management of the temples and properties of the Galta Peeth/Thikana and appoint a board to manage the properties and temples of the Galta Peeth in line with the Vaishno Devi Shrine or Tirupati Balaji Temple or in any other manner which the court may deem fit and proper. The high court dismissed the PIL on the ground of the petitioner having an alternate statutory remedy. Upon appeal, the Supreme Court held that "the concept of Public Interest Litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other down trodden people. Through the Public Interest Litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of Public Interest Litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining Public Interest Litigation. The Judiciary should deal with the misuse of Public Interest Litigation with iron hand. If the Public Interest Litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and down trodden will be defeated. The courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of Public Interest Litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people, whose rights are adversely affected or at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum, instead of entertaining the writ petition filed as Public Interest Litigation."

In *Prisoners Rights Forum* v. *High Court of Judicature at Madras*,[11] the PIL before the High Court of Madras sought the constitution of a special bench for deciding the *habeas corpus* petitions challenging the preventive detention under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,

10 (2014) 5 SCC 530.

11 AIR 2014 Mad 246.

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Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1982. The high court observed that PIL is not a pill or panacea for all wrongs. It is essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. Articles 32 and 226 of the Constitution of India contain a tool which directly joins the public with judiciary. PIL may be introduced in a court of law by the court itself *suo motu*, rather than the aggrieved party or any other third party. For the exercise of the court's jurisdiction, it is unnecessary for the victim of the violation of his or her rights to personally approach the court. In PIL, the right to file suit is given to a member of the public by the courts through judicial activism. PIL should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. It should not also be a PIL.

In *G. Pravina* v. *Narendra Modi & Director General of Police*,[12] the PIL before the High Court of Bombay sought a writ of *mandamus* directing the Director General of Police, Gujarat to take action against the then prime ministerial candidate of the BJP, Narendra Modi, so as to require him to take back his wife, to provide her dignified life, ensuring freedom of liberty, speech and expression and equal status as his wife "in the best interest of the Nation, Women and Future generation." Dismissing the PIL as an intrusion of privacy of the candidate, the high court referred to the case law to hold that "in matters relating the PIL, the Supreme Court has time and again cautioned that the Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting Interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect."

In *K. R. Ramaswamy* v. *Secretary*,[13] the PIL before the High Court of Madras sought a writ of mandamus, "to direct the respondents to consider and pass appropriate orders on his representation to the state Chief Minister for providing security and safety to the citizens of Tamil Nadu and ensure the fundamental rights

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12 (2014) 5 MLJ 421.

13 (2014) 7 MLJ 257.

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guaranteed under Article 19 and 21 are complied in the present situation which is in question in the state of Tamil Nadu, within stipulated time period as may be fixed by this Court". The high court, while referring to the case law on the scope and nature of PIL, held that "PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief….It is settled law that the judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the party of the Government. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance of the State with its constitutional or statutory duties."

III PIL AND PROCEDURE

In *Virendra Singh Panwar* v. *State of Uttarakhand*,[14] the High Court of Uttarakhand held that the "right to sue in a public interest litigation survives, even if the petitioner in the public interest litigation is dead, provided the litigation is bona fide" and that "in such a case, the Court can proceed by appointing an Amicus Curiae." The court found on facts that the instant PIL was not *bona fide*, and accordingly dismissed the PIL.

In *R. Muthukrishnan* v. *Union of India*,[15] the PIL filed by a practising advocate before the High Court of Madras, seeking a declaration that the direct benefit transfer scheme for liquefied petroleum was inconsistent with public law and the constitutional requirements. The high court framed a "preliminary question" as to "whether an Advocate is entitled to argue in a PIL with his robes on the ground that he being an advocate, is entitled to argue with his robes when he is a petitioner in person in a Public Interest Litigation". The petitioner pleaded that he was an advocate enrolled with the Bar Council of Tamil Nadu and that he was duty bound, in terms of the rules framed under the Advocates Act, 1961, to wear the band and gown while appearing in court. The high court opined that the "petitioner being an Advocate appearing as a litigant in person, he is not practising his profession and he cannot be permitted to argue with his robes". The court rejected the plea taken in revision that "the Court is without jurisdiction to frame the preliminary question suo-moto", taking the view that the "Court exercising power under Article 226 is entitled to regulate its procedure with a view to ensure full and adequate opportunity to the parties" and "to achieve the ultimate object of a fair hearing."

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14 2014 (1) UC 151.

15 (2014) 8 MLJ 1.

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IV PIL AND *LOCUS STANDI*

In *Consumers Guidance Society* v. *Government of Andhra Pradesh*,[16] three PILs before the High Court of Andhra Pradesh claimed the identical relief of a writ of *mandamus* or *quo warranto* for quashing the order of extension of services of the named Chief Secretary to the Government of Andhra Pradesh who was about to attain superannuation on completion of 60 years. The high court rejected the contention that it should not examine the PIL on the allegation that the petitioners were in fact an action by a private individual in the guise of PIL. The high court held that "when very fundamental question has been raised with regard to executive power of the Governor under Constitution", the "petition cannot be thrown out even if it is found mala fide as there cannot be any estoppel as against challenge based on constitutional provision; even a dreaded criminal can also challenge the constitutional lapses in decision taking process".

In *Menghani Bhai* v. *Union of India*,[17] the PIL before the High Court of Kerala sought the writ of *quo warranto* to declare the appointment of named respondent to the post of Director, National Waterways Road, Maradu, Kochi as illegal and erroneous for contravening provisions of regulations of recruitment. The high court upheld the *locus standi* of the petitioner, a senior accounts officer with the Inland Waterways Authority of India at Head Office, Noida, New Delhi, to file the PIL challenging the appointment of the named respondent as the Director at Kochi. The court noted that the petitioner was not a competitor to the post of director. He was not one of the candidates who were interviewed and would have been successful in the selection. Therefore, so far as named respondent was concerned, he has no animosity or hidden agenda. The court also overruled the plea that the petitioner lacked standing as he was dismissed from service pursuant to a CBI enquiry. The high court held that "till date, no law says either by way of a statute or precedent that a person who is convicted of a crime or dismissed from service has no *locus standi* to challenge the appointment of a person on the ground of want of qualification."

In *T. Retnapandian* v. *Union of India*,[18] the PIL before the High Court of Madras sought a declaration that the nomination of the named respondent as a member of the Central Council of Indian Medicine, by a notification issued by the Government of Tamil Nadu, was illegal and for a consequential order restraining the said respondent from functioning as a member of the Central Council of Indian Medicine. The PIL was opposed on the ground that the petitioner was "none else than the alter ego" of the former president of the Central Council who was inimically opposed to the named respondent and that the petitioner was "fighting a shadow litigation". The high court found that the respondents failed to show the relationship or connection between the former president of the Council and the petitioner. The high court observed that "though the PIL is not actually couched as one for the

16 AIR 2014 AP 106.

17 2014 (2) KLJ 491.

18 MANU/TN/0766/2014.

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issue of a writ of *quo warranto*, the principles governing a writ of *quo warranto* would equally apply to cases of this nature, and that in a writ of *quo warranto* the question of *locus standi* pales into insignificance as the court is concerned about the eligibility of the candidates with reference to statutory provisions". The high court took pains to clarify that the issue in the PIL did not fall within the ambit of service jurisprudence. The high court observed that neither the named respondent nor the writ petitioner was "seeking appointment or promotion to any post. What is questioned in the writ petition is a nomination of the said respondent to a regulatory body, namely, the Central Council of Indian Medicine." Referring to the infirmities in the nomination process, the high court declared the impugned notification as illegal and directed the Central Government to review the nomination of the said respondent to the Central Council, in the light of the observations made in the order.

In *Shri Balasaheb Baburao Jambulkar* v. *State of Maharashtra*,[19] the grievance in the PIL filed by an 80 years old freedom fighter before the High Court of Bombay was that four professional institutions run by Mumbai Education Trust, by manipulating the accounts, got higher fees fixed by the Shikshan Shulka Samiti to the prejudice of the student community. The PIL also alleged that a portion of fees charged to backward caste students was reimbursed by the state government, thus not only resulting in loss to exchequer but allowing trust to illegally profiteer. The Samiti had rejected the complaint of the petitioner filed in this regard on the ground that the only person who could complain was the student and/or his/her parents. The PIL sought a direction that the fees fixed by for the specified academic years in respect of the said institutions be reworked so as to compute the correct fee chargeable by each of the four institutions from its students. The PIL further sought that the excess amount received by the said four professional institutions as fees from its students as determined on the re-computation of correct fees, be refunded. The high court upheld the *locus standi* of the petitioner who claimed to have interest in student welfare and to have filed the PIL to save students from exploitation at the hands of the educational institutions. The high court found that the Samiti has neglected its responsibility of looking into the complaint filed by a member of the general public with regard to the fixation of the fees on the ground as it had failed to appreciate that a student of the institution was so situated that it would be impossible for him to challenge the fees charged by the institution and at the same time, attend the institution to pursue his academic career. The court observed that "the genesis of PIL is to ensure that justice become available to all sections of the Society i.e. poor and marginalized as also to persons who are so situated that they cannot of their own take on the mite of an institution which is exploiting them. In such cases, it is open to the public spirited citizens to file a PIL so as to address the wrongs committed as in this case to the student community."

In *Cricket Association of Bihar* v. *Board of Control for Cricket in India*,[20] the PIL before the High Court of Bombay sought direction to Board of Control for

19 2014 (4) Bom CR 160.

20 2014 (7) Bom CR 814.

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Cricket in India (BCCI) to recall its order constituting probe panel to conduct enquiry into allegations of betting and spot fixing in Indian Premier League (IPL) cricket matches against accused persons. The high court rejected the challenge to the *locus standi* of the petitioner. It was sought to be argued that the petitioner had a private interest and was involved in other disputes and litigation with the BCCI and its officials. The petitioner contended that irrespective of the dispute and litigation, it was interested in upholding the transparency, accountability, integrity and faith of the public at large in the game of cricket. The high court held that the factum of such dispute/litigation did not disentitle the petitioner to file a PIL challenging the manner in which the commission has been constituted. While a dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL, "in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice". The high court observed that it "in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee."

In *Janhit Manch and Utsal Karani* v. *State of Maharashtra*,[21] the PIL before the High Court of Bombay questioned the legality of a 56 storied residential building known as 'Palais Royale' and a public parking lot adjacent to it by a developer on the ground that the structures are erected in violation of planning norms, and use of discretionary power by the municipal commissioner to grant concessions to the developer is excessive and bad in law. The PIL challenged the approvals and commencement certificates in respect of the residential building and public parking lot, and sought a writ of mandamus for demolition of additional floors of the residential building. The high court upheld the *locus standi* of the petitioner, a non-governmental organisation working for the cause of good governance in the city of Mumbai dealing with various issues as a non-political forum. It could not be said that there was no public interest involved in adjudication of these issues. The high court found that the petitioner was not directly involved in litigation against the developer and that the matter raised questions that would concern several cases of multi storied building in City of Mumbai.

In *Shahid Ali* v. *Union of India*,[22] the PIL before the High Court of Delhi impugned the notification of the Union Public Service Commission (UPSC) whereby Arabic and Persian have been excluded from the list of optional subjects mentioned in group-II "literature of languages" of the Main Examination for the Civil Services conducted by the UPSC. The PIL also sought a direction to the respondents to again include Arabic and Persian as subjects in which the candidates could take the said examination. The high court noted that the petitioner claimed to be a practicing advocate and was neither a candidate for the said examination

21 2014 (7) Bom CR 237.

22 2014 (213) DLT 164.

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nor an aspirant for the civil services. It was not as if the persons if any affected or aggrieved by the impugned notification were not in a position to themselves approach the court. The court opined that such persons if any, being aspirants to the civil services of this country, were more than well equipped to and capable of, if aggrieved from exclusion of Arabic and Persian language from the subjects in which the said examination can be taken, to themselves challenge the same. The high court held that the petitioner had been unable to satisfy it as to how was he entitled to file the petition in public interest. The high court recalled that the legal tool of PIL was invented "as an exception to the otherwise well established rule, of only a person having cause of action or *locus standi* being entitled to approach the Court. Such invention was deemed necessary finding that in certain situations, owing to social or economic backwardness or other reasons the aggrieved parties were themselves unable to approach the Court". The field of operation of the said tool was expanded to cover situations where a general direction of the court was deemed necessary, not for the benefit of any one person or a group of persons but for the benefit of the public generally *viz.,* protection and preservation of ecology, environment etc. and for maintaining probity, transparency and integrity in governance. The high court noted that the Supreme Court has been repeatedly issuing warnings of allowing PIL to be misused to become Publicity Interest Litigation and of allowing "meddlesome interlopers" to file PIL. The court proceeded to examine the contentions of the petitioner and found no merit in the same. The court dismissed the PIL both on merits and on lack of standing.

In *Rohini Kumar Das* v. *State of Assam*,[23] the grievance of a practicing lawyer in the PIL before the High Court of Guwahati was that the flying club - known as "The Assam Flying Club" in Guwahati, which used to provide flying facilities and impart training for becoming pilots, stopped its activities for the last few years. The PIL sought a direction to have a committee comprising of experts in related fields constituted to examine all aspects of the viability of the club, including its financial viability, and to formulate a revival scheme for the club as an existing organization or its re-location and merger with proposed Aviation Manpower Training Institute at Lilabari, North Lakhimpur within a period of three months. The PIL further sought that the progress in the implementation of the scheme be reported to the court every three month till complete implementation of the scheme; and a writ in the nature of mandamus/order/direction directing to the Government of Assam to release fund to clear outstanding liabilities of the club. The high court declined to entertain the matter as a PIL, reasoning that the petition does not involve any issue of public interest affecting marginalized groups of people, nor would a mandamus lie directing a club to revive its activities, which would be its prerogative. The high court held that since the petitioner was a practicing lawyer and did not claim to be the member/shareholder/contributory of the club, he has *no locus* to maintain the PIL.

23 2014 (5) Gau LR 636.

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V *SUO MOTU* PIL

In Re: The Commissioner & Secretary, Finance Department & The Commissioner & Secretary Education Department[24] was a *suo motu* PIL initiated by the single judge of the Guwahati High Court. While hearing a writ petition by several teachers against the state and its authorities, it was noticed by the single judge that the state officials had made large-scale illegal appointments of teachers (around 752) in 1989 in Dhemaji and Lakhimpur Districts without there being any sanctioned/existing post and also without any appointment orders, much less valid appointment orders in favour of any appointee. It was also noticed that these persons (teachers) were being paid salary in fraudulent way without obtaining proper sanction/orders from the competent authority as per business rules of the state and in this process, some were not being paid salary and some were being paid less. In the meantime, sometime in 1992, the services of few teachers were terminated. This led to filing of several writ petitions by terminated teachers against the state challenging their termination orders. Some teachers who claimed to be in service prayed for a direction that they be paid their salary, which according to them, was not being paid or was being paid less. The single judge in the said writ petition directed the registration of a separate PIL (*suo motu*), after obtaining necessary orders from the chief justice to enable the court to further probe into the matter and pass appropriate orders if called for in the larger public interest. The high court monitored the case with a view to find out as to whether any action was taken and if so, whether it was in accordance with law, so that the issues are brought to their logical end. Accordingly, an investigation was carried out, and upon finding *prima facie* several irregularities alleged to have been committed in making the appointments on the post of teachers and in making payment of salaries to them by resorting to illegal means, the State of Assam lodged an first information report (FIR) with Central Investigation Department (CID) Police Station, Guwahati. The CID sought permission from the state for according sanction as required under section 197 of Cr PC read with section 19 of the Prevention of Corruption Act, 1988 to start prosecution against 14 persons who were found involved in the scandal, including four state employees. The competent authority then examined the issue on the basis of material available with the state with a view to find out as to whether any case was made out for grant of sanction. The state declined to grant sanction so far as five employees were concerned; whereas, it granted sanction to prosecute 10 persons finding *prima facie* material against them and accordingly, the charge sheet was filed against them in the competent court. The question that arose now in the PIL was whether the high court should examine the legality and correctness of the state's action in declining to grant sanction to prosecute five persons. The court found that the orders declining sanction were reasoned orders, passed by the state (competent authority) after taking into consideration the evidence and material on record. The court held that it did not consider it proper in its extra ordinary PIL jurisdiction under article 226/227 of the Constitution of India to

24 2014 Cri LJ 2764.

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quash them. Moreover, the court could not issue mandamus against the state and direct the State to accord sanction. The court disposed of the PIL, while directing the sessions judge/special judge to proceed with the trial strictly in accordance with law and conclude the trial preferably within a period of one year as an outer limit from the date of production of the order.

VI PIL AND ARBITRARY STATE ACTION

In *Manohar Lal Sharma* v. *Principal Secretary*,[25] the PIL before the Supreme Court pertained to the coal scam. The PIL alleged that the allocation of coal blocks for the period 1993 to 2010 by the Central Government was illegal and unconstitutional *inter alia* on account of non-compliance of the mandatory legal procedure under the Mines and Minerals (Development and Regulation) Act, 1957, breach of section 3(3)(a)(iii) of the Coal Mines (Nationalisation) Act, 1973, violation of the principle of trusteeship of natural resources by gifting away precious resources as largesse, arbitrariness, lack of transparency, lack of objectivity and non-application of mind; and the allotment made in favour of ineligible companies was tainted with *mala fides* and corruption. According to the Central Government, the reason for not adopting the competitive bidding through public auction was that coal was a natural resource used as a raw material in several basic industries like power generation, iron and steel and cement. The end products of these basic industries were, in turn, used as inputs in almost all manufacturing and infrastructure development industries. Since the price of coal occupies a fundamental place in the growth of the economy and any increase in the input price would have a cascading effect, auction of coal blocks could not have been possible when the power generation and, consequently, coal mining sectors were first opened up to private participants as the private sector needed to be encouraged at that time to come forward and invest. Allocation of coal blocks through competitive bidding in such a scenario would have been impractical and unrealistic. Indeed, when the proposal for introduction of competitive bidding was first mooted in June, 2004, the state governments expressed their reservations based on diverse concerns.

The Supreme Court held that it could not conduct a comparative study of various methods of distribution of natural resources and could not mandate one method to be followed in all facts and circumstances. It was not the domain of the court to evaluate the advantages of competitive bidding *vis-à-vis* other methods of distribution / disposal of natural resources. However, if the allocation of subject coal blocks was inconsistent with article 14 of the Constitution and the procedure that was followed in such allocation was found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffered from favoritism or nepotism and violative of the mandate of article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation would follow. The court found on facts and statutory provisions that the allocation of coal blocks made by way of government dispensation route (Ministry of Coal) was inconsistent with the

25 (2014) 9 SCC 516.

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constitutional principles and the fundamentals of the equality clause enshrined in the Constitution. Equally, there was also no question of any consortium/leader/ association in allocation as had been the prevalent norm. The court detailed the various infirmities in the process of allocation, concluding that the screening committee had never been consistent, it was not transparent, there was no proper application of mind, it had acted on no material in many cases, relevant factors have seldom been its guiding factors, there was no transparency and guidelines have seldom guided it. On many occasions, guidelines were honoured more in their breach. There was no objective criteria, nay, no criteria for evaluation of comparative merits. The approach had been ad-hoc and casual. There was no fair and transparent procedure, all resulting in unfair distribution of the national wealth. Common good and public interest had, thus, suffered heavily. The court accordingly declared the allocation of coal blocks based on the recommendations made in all the 36 meetings of the screening committee as illegal.

In *Common Cause* v. *Union of India*,[26] the PILs before the Supreme Court pertained to the use of publicly funded government advertising campaigns as *de facto* political advertising canvass in violation of articles 14 and 21 of the Constitution. The PIL sought a writ in the nature of *mandamus* restraining the Union of India and all the state governments from using public funds for advertising in a manner so as to project the personalities, parties or particular governments and for laying down binding guidelines which will prevent the abuse of public funds by such advertising. The Supreme Court took the view that there was a need to distinguish between advertisements that are part of government messaging and daily business and advertisements that are politically motivated. The Supreme Court found it proper to constitute a committee to undertake task of suggesting guidelines to Supreme Court after intricate study of all the best practices in public advertisements in different jurisdictions and to require the committee to submit the same before Supreme Court.

In *Manzoor Ali Khan* v. *Union of India*,[27] the PIL before the Supreme Court sought a direction to declare section 19 of the PC Act unconstitutional and to direct prosecution of all cases registered and investigated under the provisions of PC Act against the politicians, MLAs, MPs and Government officials, without sanction as required under section 19 of the PC Act. The petitioner, a practicing advocate in the State of Jammu & Kashmir, had pleaded that in the said state, several government officials have been charged for corruption but in the absence of requisite sanction, they could not be prosecuted. Referring to several instances including those noticed by the Supreme Court itself in various orders, the petitioner had contended that the provision for sanction as a condition precedent for prosecution is being used by the Government of India and the state governments to protect dishonest and corrupt politicians and government officials. The court referred to the case law to hold that while it was not possible to declare that the

26 (2014) 6 SCC 552.

27 (2014) 7 SCC 321.

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requirement of sanction is unconstitutional, the competent authority had to take a decision on the issue of sanction expeditiously, as already observed. The court disposed of the PIL without further directions, reasoning that a fine balance has to be maintained between need to protect a public servant against *mala fide* prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom *prima facie* material in support of allegation of corruption exists, on the other hand.

In *Shanawaz Khan* v. *Municipal Corporation of Delhi*,[28] the PIL before the High Court of Delhi sought a direction to the respondent authorities to stop the plying of e-rickshaws in the area falling under the Government of National Capital Territory of Delhi as the said e-rickshaws had not been registered, they were not insured and did not have fitness certificates. A seemingly alternative prayer had been made that the e-rickshaws may not be allowed to carry more than 2 to 3 passengers in view of the safety of passengers. Referring to the Central Motor Vehicles Rules, 1989, the high court held that e-rickshaws were 'motor vehicles', which e-rickshaws had to be registered and required permits for plying. The plying of e-rickshaws was required to be covered by an appropriate policy of insurance. Drivers by and large, were found not to possess driving licences. The high court concluded that the plying of un-registered e-rickshaws was illegal as per the existing law, and issued the mandamus to the effect that the respondents shall act in conformity with the legal provisions and prevent the plying of unregistered e-rickshaws.

In *Indian Council of Investors* v. *Union of India*,[29] the PIL filed before the High Court of Bombay sought a direction to the Securities and Exchange Board of India (SEBI) to cease, desist and refrain from calling for Call Data Records (CDRs) and details of tower location from Telecom Service Providers (TSP); to disclose the names of its officials who had called for such information from TSP and to take necessary action against such officials; and to disclose on oath all investigation, adjudication, prosecution and other action that may have been taken and was being taken on the basis of CDRs collected. The PIL pleaded that the action of calling for CDRs from TSP by securities and exchange board of India, SEBI violated and infringed the fundamental right of privacy of citizens of India, and impugned the action of SEBI of seeking to intercept and monitor the calls. On analysing Security and Exchange Board of India Act, 1992 (hereinafter SEBI Act.) as amended by Ordinances issued by President of India on July 16, 2013, September 16, 2013 and March 28, 2014, the high court found that there the SEBI was authorized under the SEBI Act to call for CDRs from the TSP. However, this power was capable of misuse and could violate a citizen's right to privacy guaranteed by article 21 of the Constitution. Therefore, the high court held that such a power could not be exercised by SEBI for conducting a fishing enquiry. It could not be a blanket power to hunt out information without any pending inquiry

28 213 (2014) DLT 762.

29 [2014] 123 CLA 267 (Bom).

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or investigation. This power could only be exercised by SEBI in respect of any person against whom any investigation or enquiry was being conducted. Further, such information could be called for only by an officer duly authorized by SEBI to call for information with regard to CDRs from the TSP. Further, as a safeguard, it would be necessary that before calling for such information, an opinion be recorded on the file by the authorized officer, calling for the records indicating the reason why he considered it necessary to call for the CDRs.

In *Private Nursing Schools and Colleges Management Association* v. *State of Maharashtra,*[30] the PIL before the High Court of Bombay pertained to the question as to whether the state government could, under the Maharashtra Nurses Act, 1966 read with the Indian Nursing Council Act, 1947, impose conditions in the matter of enrolment of students by the Maharashtra Nursing Council (MNC). The petitioner was a registered management association for the private nursing schools and colleges in the State of Maharashtra. Near about 400 schools and colleges were the members of the association, which was running private nursing schools and colleges in the entire state. The MNC was empowered to grant permission to run the said nursing schools/colleges by following due procedure of law as prescribed under the Maharashtra Nurses Act, 1966. The Government had, in terms of the said statutes constituted the MNC and issued the essentiality requisite certificate to start schools/colleges. The government had thereafter passed a resolution making it mandatory for schools/colleges to comply with its terms, failing which permission to admit students would be refused. Further, the resolution directed that students admitted in those schools/colleges which fulfill these conditions would be eligible for getting scholarship. The high court construed the statutory scheme to conclude that the MNC alone was empowered and authorized by law for matters of registration of nurses, their training, practice and recognition of training institutions and their affiliation. None else could claim to be conferred with these powers nor could they discharge these duties. The role of the government was confined to establishment of the MNC and dealing with instances where council was not functioning or incapable of functioning or had ceased to function. However, so far as duties and functions of MNC were concerned, they were to be performed by MNC alone and state government had absolutely no role in that behalf. It was the MNC's prerogative to decide the number of students to be admitted in recognized institutions. The high court held that the conditions in so far as they conferred upon government the power to insist on further approval and permission from it so as to enable nursing institutions to commence courses and enroll or admit students therein, were wholly illegal, arbitrary and violative of the constitutional mandate. Similarly, there was no legal basis for the government to insist on grant of scholarship to backward class students who had undergone study in courses.

In *Corlim Citizen Civic & Consumer Forum* v. *State of Goa*,[31] the PIL before the Bombay High Court (Panjim Bench) complained of illegalities in construction

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30 2014 (1) ABR 3

31 2014 (6) Bom CR 666.

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raised by the respondents and of the fact that the construction was on the road. The high court construed the provisions of the Goa (Regulation of Land Development and Building Construction) Act, 2008 to hold that as the construction area was in the village limits, the construction would have to be in accordance with licence of village panchayat passed pursuant to a valid resolution. The town and country planning authority would issue occupancy certificate only upon seeing licence of village panchayat granted under valid authority of law. The high court, accordingly disposed of the PIL with such directions.

In *Dipak Babaria* v. *State of Gujarat,*[32] the PIL before the High Court of Gujarat had challenged the permission granted by the Collector, Bhuj, to sell certain parcels of agricultural land situated in District Kutch, which were said to have been purchased earlier by the respondent for industrial purpose in favour of another respondent, as being impermissible under the provisions of the Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Areas) Act, 1958. The PIL contended that under section 89A of the Tenancy Act, agricultural land could be permitted to be sold by an agriculturist to another person for industrial purpose provided the proposed user was bona-fide. In the event, the land was not so utilised by such a person for such purpose, within the period as stipulated under the Act, the collector of the concerned district had to make an enquiry, give an opportunity to the purchaser with a view to ascertain the factual situation, and thereafter pass an order that the land shall vest in the state government on payment of an appropriate compensation to the purchaser which the collector may determine. It was contended that there was no provision for any further transfer of agricultural land from one industrial purchaser to any third party, once again, for industrial purpose when the first purchaser of agricultural land had defaulted in setting up the industry. Apart from being in breach of the law, the transaction was stated to be against public interest, and a *mala fide* one resulting into a serious loss to the public exchequer. The PIL sought an inquiry against the collector and the revenue minister of the state government for their role in the matter, and also a direction to the state authorities to resume the concerned land. The high court had rejected the PIL on two grounds, firstly that there was delay in initiating PIL, and that the writ petitioner had suppressed the material facts before the court concerning the investment claimed to have been made by the purchasing respondent. The Supreme Court, upon appeal, analysed the provisions of the Act and the factual matrix, to hold that whereas sections 89 and 89A contemplate a certain procedure and certain requirements, what was done in the present matter was quite different. The court held that the present case was clearly one of dereliction of his duties by the collector and dictation by the minister, showing nothing but arrogance of power. The court directed that the land was to vest in the state government free from all encumbrances, though upon payment of appropriate compensation to the purchaser, as the collector may determine.

32 AIR 2014 SC 1792.

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In *Suswarajya Foundation* v. *Collector, Satara*,[33] the PIL before the High Court of Bombay brought to the notice of the court that in all major cities in the state there were a large number of illegal banners, hoardings, posters, digital flexes, arches etc. displayed mainly by the political leaders/workers. The PIL pleaded that occasions for such display were birthdays of political leaders, appointments made of the political leaders to a particular post, alleged achievements of the political leaders. There were posters and banners displayed for welcoming the political dignitaries to various cities. There was a display of banners, posters, flexes, arches *etc* by the political leaders for conveying good wishes on account of religious festivals. The PIL contended that such illegalities were causing defacement of private and public properties in the cities, and that the municipal/police authorities were not taking action in respect of these illegalities for various reasons. Referring to the provisions of the Maharashtra Municipal Corporations Act, 1949, the Mumbai Municipal Corporation Act, 1888 and the Maharashtra Prevention of Defacement of Property Act, 1995 and other municipal laws, the high court held that it was duty of every citizen including political workers and leaders to safeguard public properties, and that elected representatives of people were under an obligation to prevent such illegalities. The high court passed interim directions requiring political parties to ensure that no member of any party should put posters, banners, arches, hoardings without permission of requisite authority and directing the municipal/police authorities to take action in respect of these illegalities.

In *Harit Vasai Saurakshan Smirti* v. *State of Maharashtra*,[34] the batch of PILs before the High Court of Bombay had sought the stoppage of further illegal constructions and demolition of existing illegal constructions on public lands in Thane district. The high court had passed various orders from time to time, while recording that it was convinced that there were large number of constructions which were made unauthorisedly and illegally. The high court directed the respondent authorities to hold meetings and to take decision with regard to demolition of buildings which had been constructed in whole district without permission. In compliance with these directions, the state government issued a resolution constituting high power committee headed by the chief secretary. The chief secretary eventually filed his affidavit indicating that non-residential encroachments would be removed and that residential encroachments would be removed as per time-table attached to affidavit. Thus, based on decisions/ actions of state government and high power committee and various local authorities and also assurances made by state government and authorities in their affidavits, the PILs were disposed of with directions and with liberty to the petitioners to apply in event of non-compliance by any authority or other difficulty.

In *Dr. Ravindra Shukla* v. *State of Uttar Pradesh*,[35] the PIL before the High Court of Allahabad highlighted the issue relating to the issuance of arms licences by the District Magistrate in Amroha without the prior concurrence of the Chief

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33 2014 (5) ABR 708.

34 2014 (1) ABR 779.

35 2014 (10) ADJ 669.

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Wild Life Warden, in violation of the provisions of section 34 (3) of the Wild Life (Protection) Act, 1972. Noting that a wild life sanctuary by the name of Hastinapur sanctuary, spread over an area of 2073 sq km, was situated in the districts of Meerut, Ghaziabad, Bijnore and Jyotiba Phule Nagar, and that the population of the sanctuary included various species of antelope, sambhar, cheetal, blue bull, leopard, hyena, wild cat and different types of birds as also alligators, the high court directed that hereafter, no licence under the Arms Act, 1959 shall be granted in the State of Uttar Pradesh without the No objection certificate (NOC) of the Chief Wild Life Warden in those areas which fell within the purview of section 34 of the Act of 1972. The high court further directed that the competent authority shall take necessary steps in accordance with law in pursuance of notices to show cause which have already been issued in respect of those arms licence holders who do not have the NOC of the Chief Wild Life Warden under section 34 (3) of the Act of 1972. The state government was required to take necessary steps to issue directions to all the district magistrates concerned to take steps with reference to those arms licences which have been granted without complying with the provisions of section 34 (3) in respect of those areas which fall within a radius of ten kilometers of a sanctuary.

In *Dr. Bishnu Prasad Das* v. *State of Assam Represented by Chief Secretary To Govt. of Assam*,[36] the PIL before the High Court of Gauhati was filed by a few residents of a locality in Guwahati with the primary allegation that the Haryana Charitable Trust (Haryana Bhawan), was letting out the Bhawan for hosting events like wedding and birthday parties, political meetings, religious functions, school functions and entertainment programmes without having any valid trade licence from the Gauhati Municipal Corporation (GMC) and permission from superintendent of police. The PIL further alleged that GMC failed to take action against Bhawan for causing pollution. The high court held that in order to carry on trade of Bibah Bhawan, licence was mandatorily required. The high court found that only 6 Bibah Bhawans had fulfilled norms for running and operating Bibah Bhawan. Out of 65 Bibah Bhawans, which were operating, 24 of them had no NOC for building construction. The court observed that the Bibah Bhawans which did not have licence would have the liberty to apply to GMC for grant of licence and it was open for GMC to issue them licence subject to compliance of provisions of law and applicable norms for running Bibah Bhawan. The Commissioner of GMC was directed to issue notice to all Bibah Bhawans who do not fulfill requirements of law. The management of Bibah Bhawans had to ensure that roads linked to Bibah Bhawans were not blocked by vehicles parked causing inconvenience to commuters and pedestrians, that no loud speakers should be used at Bibah Bhawans between 10.00 pm to 6-00 am and that bursting of fire-crackers should not take place after 10.00 pm. The GMC and superintendent of police were directed to ensure that no Bibah Bhawan Marriage Hall was allowed to function unless norms and rules laid down were fulfilled and strictly adhered to by Bibah Bhawans.

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36 2014 (6) Gau LR 816.

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In *Satyendra Kumar Gupta* v. *State of Rajasthan*,[37] the PIL before the High Court of Rajasthan had sought the simplification of the procedure for donation of human bodies for research to the Medical Colleges in the State of Rajasthan. The writ petition was disposed of, with certain directions to simplify the procedure for donation of the human bodies, prayer meeting on "Dadhich Jayanti" at SMS Medical College, Jaipur, and to collect the donated body in a befitting manner. Subsequently, the court allowed an application for constructing a monument in the memory of body donors with their names inscribed on a slab to be erected in the monument, with directions to take requisite steps within three months. However, the said order was not complied with. The court disposed of the proceedings, stating that it expected the advocate general, who was the chairman of the committee constituted for the purpose, to use of his good offices for compliance of the orders pertaining to the construction of monument as expeditiously as possible.

In *Sandeep Pandey* v. *State of Uttar Pradesh*,[38] the PIL before the High Court of Allahabad related to the validity of a decision of the Kanpur Development Authority (KDA) to construct an underground car parking area for 680 cars in the lower basement with a shopping complex of 150 shops in the upper basement in a portion of Phoolbagh park at Kanpur. Phoolbagh, which was also known as Ganesh Vidhyarthi Udyan consisted, *inter alia*, of King Edward Memorial Hall (KEM Hall) which was managed by the Archaeological Survey of India because of its intrinsic heritage value and historical importance. The challenge was on the ground that the construction of an underground shopping complex and car parking in an area reserved for a park under the master plan was unlawful. The high court held that there was no record to indicate that any study was carried out on impact of proposed plan for construction, and that merely because project was to be self-financed would furnish no justification for the state to deviate from the basic object and purpose of the reservation in the master plan. Since it was necessary for the KDA to have carried out a thorough study in regard to construction of a shopping complex and the basic issue of traffic congestion, it would not be appropriate to allow a historical park situated in the city of Kanpur and associated with important events of freedom struggle, to be frittered away. Finding the decision of KDA to construct complex and car park in area to be legally impermissible and contrary to provisions of master plan, the high court required the KDA to conduct a fresh survey and proper enquiry to conceive of project on the likely need for car parking facility.

In *Shishir Realty Private Ltd. and RKW Developers Pvt. Ltd.* v. *Vice Chairman & Managing Director, City*,[39] some complaints had been received by the State of Maharashtra regarding lease of plots by the CIDCO during the tenure of the then vice chairman on grounds of change of user and sub-division of plots. Upon an inquiry by the chief secretary, the new, Vice Chairman of CIDCO cancelled the

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37 2014 (4) WLN 539.

38 2014 (11) ADJ 362.

39 2014 (1) Bom CR 274.

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lease deeds of the property developers, which was challenged by the affected developers before the Bombay High Court. Meanwhile, social activists filed the PIL challenging the allotment of plot and for cancellation of lease agreements. The high court found on facts that the change of user or subdivision of plots or execution of lease agreements was not in violation of any statutory condition nor *ultra vires* the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008, and accordingly quashed the order passed by CIDCO impugned by the private developers. The PIL was consequently disposed of.

In *Shri Balasaheb Baburao Jambulkar* v. *State of Maharashtra*,[40] the grievance in the PIL filed by an 80 years old freedom fighter before the High Court of Bombay was that four professional institutions run by Mumbai Education Trust, by manipulating the accounts, got higher fees fixed by the Shikshan Shulka Samiti to the prejudice of the student community. The PIL also alleged that a portion of fees charged to backward caste students was reimbursed by the state government, thus not only resulting in loss to exchequer but allowing trust to illegally profiteer. The Samiti had rejected the complaint of the petitioner filed in this regard on the ground that the only person who could complain was the student and/or his/her parents. The PIL sought a direction that the fees fixed by for the specified academic years in respect of the said institutions be reworked so as to compute the correct fee chargeable by each of the four institutions from its students. The PIL further sought that the excess amount received by the said four professional institutions as fees from its students as determined on the re-computation of correct fees, be refunded. The high court found on merits that the issue raised by the petitioner was not wholly without substance, and directed the Samiti to examine his complaint, and conduct further investigation if found necessary.

In *Rashtriya Kisan Mazdoor Sangathan (Regd.)* v. *State of Uttar Pradesh*,[41] the PIL before the High Court of Allahabad sought a direction to the State Government for ensuring the realisation of cane dues payable by the sugar mills in the State of Uttar Pradesh to the cane growers, which comprised the cane price and the interest. The PIL alleged the breach by the sugar mills of the statutory obligation under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (the Act) to pay the sugarcane dues to the cane growers; and the failure of the state government to initiate steps for the recovery of the dues in accordance with law. The PIL was founded on the breach of a legal duty cast upon the state by the state legislation to ensure the payment of the cane price and interest to farmers and upon the corresponding obligation which was cast upon the sugar mills which entered into statutory agreements under the U.P. Sugarcane Supply and Purchase Order, 1954 for the purchase of sugarcane from assigned areas. The situation was compounded by the human misery of the sugarcane growers who, on the one hand had statutorily an obligation to sell the sugarcane only to the sugar mills as stipulated by the cane commissioner, while on the other hand being at the mercy of the sugar

40 2014 (4) Bom CR 160.

41 2014 (8) ADJ 671.

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mills for the re-payment of their dues. The high court noted that the situation of grave financial crisis resulted in increasing incidents of suicides in the state and even the basic needs of the families, including education of the children, not being fulfilled. The court disposed of the PIL, with a permission to the sugar mills to sell their sugar stocks to meet dues of cane growers, while requiring the collector to monitor the sale process.

In *Bodhisatwa Samaj Seva Sansthan Uttar Pradesh* v. *State of Uttar Pradesh*,[42] the grievance in the PIL before the High Court of Allahabad was that in the villages of Jaganpur Afzalpur, Fatehpur Atta and Dankaur of District Gautam Budh Nagar, a large area of land admeasuring 117 bighas belonging to the gram sabha has been usurped by third parties in collusion with the officials of the government and of the consolidation department. The PIL sought a proper inquiry and the cancellation of the allotments. Moreover, action was sought against the erring consolidation officers and employees involved in the fraudulent allotments of the gram sabha land. A reference to the Central Bureau of Investigation (CBI) had also been sought. The high court opined that a high level inquiry should be instituted by the state government to inquire into all the facts and circumstances and to ensure that action is taken against all the errant officials, including the beneficiaries, for the protection of the interest of the gram sabha. The court directed that the principal secretary (revenue) would personally monitor the progress of the matter at all levels. This would include (i) ensuring that the investigation against the remaining accused was concluded expeditiously and taken to its logical conclusion; (ii) action against all the errant officials in the departmental enquiries was concluded with utmost priority; (iii) proceedings which were pending for reversion of the land to the gram sabha were pursued with all vigilance and expedition; (iv) recovery citations which had already been issued were duly and effectively enforced while recovery citations in other such cases are issued and enforced; and (v) due steps to be taken for early disposal of the writ petitions that had been filed in the high court by certain beneficiaries. The court held that in the very nature of things it may not be possible for it to monitor on a day to day basis the administrative compliance of all the aforesaid aspects and that, in any event, may not be the appropriate course of action for it to undertake at this stage of the litigation. Accordingly, the court directed the principal secretary (revenue) to seek the cooperation, if required, of the other departments of the state and where necessary, appropriate directions could be obtained from the chief secretary of the state. The high court disposed of the PIL in the above terms.

In *Solai Subramanian alias S. Subramanian* v. *Chief Secretary, Tamil Nadu State Government, Fort St. George and another*,[43] the PIL before the High Court of Madras challenged an office memorandum issued by the registrar general of the court, permitting the judicial officers of the subordinate courts to write judgments, decrees, awards and orders in English. The high court examined the

42 2014 (7) ADJ 352.

43 (2014) 5 MLJ 257.

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relevant legal provisions and circulars to find that the primary object was to enable a few presiding officers, who had expressed difficulties in writing judgments in Tamil on account of their mother tongue being different, to write judgments in English. Such power was granted to the high court only in specific circumstances and for specified periods of time, as was to be indicated in the order. The impugned memorandum however granted all officers throughout the State a general permission to do so, which was also not limited in time. The high court accordingly held that the impugned memorandum was issued in excess of the statutory power conferred, and therefore quashed the same.

In *Janhit Manch and Utsal Karani* v. *State of Maharashtra*,[44] the PIL before the High Court of Bombay questioned the legality of a 56 storied residential building known as 'Palais Royale' and a public parking lot adjacent to it by a developer on the ground that the structures are erected in violation of planning norms, and use of discretionary power by the municipal commissioner to grant concessions to the developer is excessive and bad in law. The PIL challenged the approvals and commencement certificates in respect of the residential building and public parking lot, and sought a writ of *mandamus* for demolition of additional floors of the residential building. The high court, after analysing the provisions of the Maharashtra Regional and Town Planning Act, 1966, the Development Control Regulations and the Mumbai Municipal Corporation Act, 1888 and perusing the record, found that the construction of public parking plot was not illegal as alleged, and the developer could not be deprived from claiming incentive (Floor Space Index) FSI accrued there from for the residential building, if otherwise available in law. The other aspects were left to be considered by the commissioner/corporation at the time of issuance of occupation certificate. The high court declined to interfere with the decision of the commissioner as regards servant toilets, height of habitable floors, amenity floors, service floor, and toilets over kitchen. The court held that the FSI granted in respect of refuge area was excessive and directed the commissioner to re-examine the said issue and rework the FSI accordingly. The commissioner was also required to determine, after ascertaining the factual position, as to whether the developer was entitled to claim FSI in lieu of set-back area, and quantum of the FSI that ought to be granted under the heads of structural columns, passages at manor level and entrance, swimming pool, area over deck and refuge area at entrance level. The commissioner, while reconsidering the other aspects, was directed to consider the issue regarding need to obtain NOC from the high rise committee. The PIL was accordingly disposed of.

In *Cricket Association of Bihar* v. *Board of Control for Cricket in India*,[45] the PIL before the High Court of Bombay sought direction to Board of Control for Cricket in India (BCCI) to recall its order constituting probe panel to conduct enquiry into allegations of betting and spot fixing in Indian Premier League (IPL) of cricket matches against accused persons. The BCCI constituted the commission

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44 2014 (7) Bom CR 237.

45 2014 (7) Bom CR 814.

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on the police receiving secret information that certain members of underworld were involved in fixing of the on-going IPL cricket matches. The high court upheld the maintainability of the PIL against the BCCI, holding that though the BCCI was not created by a statute, and could not be considered to be an authority within the meaning of article 12 of the Constitution, but nevertheless, the BCCI did discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities could be said to be akin to public duties or State functions and if there was any violation of any constitutional or statutory obligation or rights of other citizens, an aggrieved party could always seek a remedy under the ordinary course of law or by way of a writ petition under article 226 of the Constitution, which is much wider than article 32. On merits, the high court found that the constitution of the commission was in violation of the provisions of Operational Rules for 2013, IPL, and recorded that the BCCI refused to furnish any details or answer any of the questions raised in connection with the constitution of the probe panel. The high court, however, did not grant any further relief, taking the view that it was the prerogative of the BCCI to constitute a fresh probe commission.

In *Mahadeo* v. *State of Maharashtra, The Principal Secretary, The Law Minister and Joint Secretary*,[46] the PIL before the High Court of Bombay contended that while making appointments of law officers in the office of Government Pleader, High Court, Aurangabad, the Government of Maharashtra had failed to consider reasonable representation from lawyers belonging to scheduled castes, scheduled tribes and other backward categories. The high court held that it was for the state government to choose and select its law officers and issue appointment orders accordingly, and that the court could not direct application of reservation to such posts. The court, however, found that the government had failed to issue appointment letters for over a year to even those who had been selected. The court held that the law officers working in the government pleader's office discharge public functions and there was a presence of public element attached to their office and posts which they hold. Considering responsible duties of law officers in the high court, the court termed it unreasonable not to finalize appointment orders for a period of one year. The court accordingly directed the state government to issue the appointment orders to law officers in the office of the government pleader within a period of six weeks.

In *Prisoners Rights Forum* v. *High Court of Judicature at Madras*,[47] the PIL before the High Court of Madras sought the constitution of a special bench for deciding the *habeas corpus* petitions challenging the preventive detention under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1982. The PIL contended that a large number of prisoners have already completed more than eight months out of twelve months of the total period of detention and that the

46 2014 (1) ALLMR 325.

47 AIR 2014 Mad 246.

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regular bench is overburdened with the hearing of statutory and non-statutory cases and criminal appeals (admission and final-hearing) apart from such detention cases. The PIL pleaded that the prisoners detained under the Act are entitled to enforce their fundamental right to speedy justice under article 21 of the Constitution of India and that the failure of the high court to constitute a special bench for speedy decision of all the *habeas corpus* petitions arising out of the Act would be violative of articles 14 and 21 of the Constitution of India. The high court held that that writ petition was not maintainable as the fundamental right of the prisoners to have speedy justice "cannot be enforced as against the Higher Judiciary in view of the constitutional limitations." According to the high court, the PIL was, in essence, a writ petition to issue a writ of mandamus to the acting chief justice to constitute the special bench. The high court reviewed the case law for the propositions that constitution of benches is the exclusive prerogative of the chief justice or the acting chief justice, as the case may be, which would necessarily that a high degree of discretion having been vested in the authority enjoying the prerogative. Such high discretion excluded the existence of any duty, and in the absence of legal duty, no mandamus could be issued. Further, according to the high court, "the Judges, particularly the Judges of Higher Judiciary in India are Constitutional Functionaries" and they "are not 'persons' or 'authorities' or 'government' against whom writs can be issued under Article 226 of the Constitution of India", and therefore, "an action to enforce Fundamental Rights under Article 14 and 21 cannot be sustained as against the Judiciary." Recording that out of about 1,632 *habeas corpus* petitions pending before the court as on 31.05.2014, 1579 petitions arose under 1982 Act, the high court stated that its "Division Bench disposes of the Habeas Corpus Petitions commensurate to the cases filed everyday", and therefore, "practically there is no necessity for constituting a Special Bench to deal with Habeas Corpus Petitions." The high court further recorded that the petitioner had made a representation to the acting chief justice with a request to constitute a special bench for the purpose, and that such representation was the proper mechanism as per the law established. Having said that, the high court took the view that the "actions and inactions of the Chief Justice shall not come under the purview of judicial review".

In *Ajeet Singh* v. *Union of India*,[48] the PIL before the High Court of Allahabad sought to restrain the military authorities of Indian Army from imposing any restriction on or blocking of specified road on the ground that it was a public road of village. The high court held that there was no material before the court sufficient to lead to an inference that the specified road was a road over which the public had the right of way. The record indicated that the road was constructed after the land was reclassified as class A(1) land, specifically for purposes of facilitating connectivity with the training facilities of the army troops. The mere fact that the road had been used by the public did not lead to an inference that the public had right of way over road as any act of trespass could not reflect existence of right of

48 2014 (8) ADJ 643.

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way in the public. The high court found that there was no illegality in decision of respondent authorities and accordingly dismissed the PIL.

In *Hindu Front for Justice* v. *State of U.P.*,[49] the PIL before the High Court of Allahabad (Lucknow Bench) sought a writ of *mandamus* commanding the opposite parties to ensure the proper maintenance of public and law and order situation in the State of Uttar Pradesh; and a writ of mandamus commanding the opposite parties to ensure that police registers without any delay an FIR as soon as the information is received by it and takes prompt action and the court may evolve a mechanism under which district magistrate, chief judicial magistrate or any other officer as may be deemed fit and proper may be directed to receive information of commission of an offence from the complainant and immediately direct the police to investigate, and such authority may also have power of supervision over police in matter of investigation of such crimes. The PIL also sought a writ of *mandamus* directing the state government to evolve a policy and to place before the court for its approval for posting of police officers at police stations on the basis of merit and without any extraneous considerations of creed, caste, religion or political affiliation; and a writ of mandamus to the police officers to make independent and fair investigation and not to be influenced by political or other considerations and with liberty to approach/inform district magistrate or chief judicial magistrate in respect of any hindrance, influence or difficulties in making speedy and independent investigation. The high court found that PIL, based on press reports, contained sweeping allegations, rather conclusions that law and order in the State of Uttar Pradesh had deteriorated, that there was increase in the cases of rape in the state and most of the police officers posted in the police stations belonged to one class/ section and that such postings were made only on the basis of caste, creed and religion. The high court observed that there was nothing in the pleading to indicate that any effort was made by the petitioners, being practicing lawyers, to verify the veracity of the newspaper reports being relied upon by them. There was also no pleading nor any material to show that any research whatsoever was done by them to ascertain the veracity of the allegations made by them in their writ petition with regard to the deteriorating law and order situation, increase in the cases of rape and the posting of the police officers on the basis of caste etc. The high court held that the pleadings in the writ petition lacked the requisite details and was unsupported by data. The high court opined that the "relief, such as, direction to the State Government to ensure maintenance of proper peace and law and order situation in the State cannot be issued merely for their asking." The court, accordingly, dismissed the PIL as not being maintainable.

In *Mohan Lal Saggar* v. *Union of India*,[50] the PIL before the High Court of Punjab & Haryana impugned the notification under the Petroleum and Mineral Pipeline Act, 1962 for acquisition of land for transportation of natural gas. The PIL was filed by some of the land owners claiming to be affected by the notification.

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49 2014 (8) ADJ 707.

50 2014 (4) RCR (Civil) 288.

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The high court found no case on merits, and recorded that the planning commission and Ministry of Petroleum and Natural Gas, in the larger public interest, felt the necessity to provide the natural gas through gas pipeline to the entire country, by establishing a gas pipeline grid. The network would ensure overall development of this region. It would provide impetus to the industry and would generate employment and prosperity in the state. Natural gas would cater to the need of the domestic customers, which would change the way of life of the residents around the gas pipeline. Laying down of the gas pipeline was claimed to be a project of national importance, and at this stage, that the entire activity for laying out the pipelines, beneath the surface in an area of approximately 80 kilometers (from Ludhiana to Jalandhar) was complete. Terming the PIL to be "purely a private lis and involving nothing but personal interest," the high court dismissed the PIL as being devoid of both public interest and merits.

In *Bahujan Samaj Educational and Cultural Forum* v. *State of Goa*,[51] the grievance in the PIL before the High Court of Bombay (Goa Bench) was that the admission programme adopted by the respondent authorities in professional degrees as well as diploma courses was arbitrary and frustrated the object of reservation policy contained in article 15(4) of the Constitution of India by denying equal protection of law to the members of other backward class to be treated as open candidates while computing the reservation seats. The PIL sought a direction to the respondent authorities "to follow law enunciated by Supreme Court" and complete admission process based on common entrance examination. The high court found on facts that there was no violation of reservation policy contained in article 15(4) of Constitution of India and any norms set down by rules and regulations, in respect of admission, and as such, dismissed the PIL.

VII PIL AND CONSTITUTIONAL CHALLENGES

In *Lily Thomas* v. *Union of India*,[52] the two PILs before the Supreme Court sought a declaration that sub-section (4) of section 8 of the Representation of the People Act, 1951 was *ultra vires* the Constitution. The said provision provided that notwithstanding anything in sub-section (1), (2) or (3) of section 8, a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction was a member of Parliament or the Legislature of a state, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision was brought in respect of the conviction or the sentence, until that appeal or application has been disposed of by the court. The Supreme Court held that sitting Members of Parliament and state legislatures could not enjoy the special privilege of continuing as members even though they were convicted of offences mentioned in sub-sections (1), (2) and (3) of section 8. The court held that Parliament lacked legislative powers to enact section 8(4), and consequently, the membership of Parliament or state legislatures was not saved by

51 2014(1) ALLMR 791.

52 (2014) 1 WBLR (SC) 69.

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section 8(4), notwithstanding that members convicted of offences filed an appeal or a revision against conviction/and or sentence. The court, accordingly, allowed the PIL.

In *Dinkar Kumar* v. *Union of India*,[53] the PIL before the High Court of Delhi impugned section 23 of the Consumer Protection Act, 1986; section 38 of the Advocates Act, 1961; section 18 of the Telecom Regulatory Authority of India Act, 1997; section 15Z of the Securities and Exchange Board of India Act, 1992; section 55 of the Monopolies and Restrictive Trade Practices Act, 1969; section 53T of the Competition Act, 2002; section 30 and 31 of the Armed Forces Tribunal Act, 2007; Section 22 of the National Green Tribunals Act, 2010; Section 125 of the Electricity Act, 2003; and Section 423 of the Companies Act, 2013, all providing for statutory appeal, against the order of the apex adjudicatory fora constituted under each of the said legislations, directly to the Supreme Court. The ground of challenge was that such provision, by excluding the powers of judicial review conferred upon the high courts by articles 226 and 227 of the Constitution, violated the basic structure of the Constitution of India. The high court noted that ordinarily a high court should not entertain a writ petition by way of a PIL, questioning the constitutionality or validity of a statute or a statutory rule. However, in light of the case law referred, the high court held that the foras constituted under each of the aforesaid legislations and against orders whereof appeal directly to the Supreme Court has been provided, do not have the power of judicial review as vested in the high court by the Constitution of India. Interposing even of the appellate fora under some of the aforesaid legislations between the original stage and the Supreme Court is of no avail; the net effect is of exclusion of power of judicial review under article 226. The high court, therefore, took the view that the PIL was not such which can be dismissed *in limine*, and accordingly admitted the PIL while expediting the hearing.

VIII PIL AND POLICY

In *Gaurav Kumar Bansal* v. *Union of India*,[54] the PIL before the Supreme Court sought directions to the Government of India to intervene and expedite the release of Indian Seamen held hostages by the Somalian Pirates in the international waters and to frame anti-piracy guidelines. The court observed that it did appear that pirates operating from Somalia had become serious menace to the safety of maritime traffic in Gulf of Aden and Western Arabian Sea and three incidents involving Indian citizens were part of the series of such events. Combating piracy was imperative for safety of seafarers as well as successful world trade. The court, while referring to the constitutional obligation on the state to protect the life and liberty of its citizens not only within the country but also outside the country in certain situations, took the view that it could not assume the role of the executive to oversee the sensitive issue of coordination with international agencies and bodies

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53 2014 (146) DRJ 350.

54 2014 (10) SCALE 372.

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for securing release of Indian citizens who were held hostages abroad, when it was shown that the departments of the government had not only taken cognizance of the problem but had also taken, in right earnest, whatever steps could be possible. The issue of coordination at international level with foreign countries and international bodies had to be left to the wisdom of experts in the government. Handling of the situation required expertise and continuous efforts. The court held that, in these circumstances, the only direction which could be issued, at that stage, was that the matter may be periodically reviewed at the appropriate level and a nodal officer may be designated who may continue to coordinate and oversee the efforts on the issue and with whom the families of the victims could also have interaction for getting information or giving suggestions.

In *S. Raja Seekaran* v. *Union of India*,[55] the PIL before the Supreme Court sought the enforcement of the prevailing laws on road safety and also directions for enactment of what the petitioner considered to be more appropriate legislative measures and for more affirmative administrative action. The PIL also sought directions from the court for upliftment of the existing infrastructure and facilities with regard to post-accident care and management to minimize loss of life and physical injuries to the victims of road accidents. The Supreme court noted that Indian roads have proved to be giant killers demanding immediate attention and remedial action, and detailed the existing laws, the road safety measures taken by the State and those recommended by the petitioner. The Court found that the four-dimensional approach that the government had earlier attempted by setting up four different working groups to go into the four issues of road safety, namely, enforcement, engineering, education and emergency care would be the best manner to approach the matter. The court held that all existing laws and norms including the provisions of the Motor Vehicles Act, 1988 as in force, were required to be implemented in the right earnest and with all vigour by the authorities of the union and the state governments who are responsible for such implementation. in so far as suitable amendments to the laws were concerned, the court stated that it could only hope and trust that all such changes or amendments which were presently under legislative consideration would be expedited and measures as might be considered necessary by legislature in its collective wisdom would be brought in the statute book in due course. The court held that, at the same time, what has been admitted to be necessary and, therefore, has been initiated by the Central Government in so far as engineering and road education was concerned shall be implemented and directions to so act should be construed to have been issued by the court by the present order. Similarly, in so far as emergency care was concerned, what had been initiated by the Central Government, as stated in its affidavit, shall be suitably implemented and extended subject to the limits of its financial ability. The court directed the states also to act accordingly and initiate similar measures if required, in a phased manner. The court took the view that to ensure the success of the process undertaken, constant supervision of the court of the measures

55 2014 (4) Bom CR 253.

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undertaken by the Central Government and the state governments and the extent of affirmative action on part of the union and the states would have to be measured and monitored by the court from time to time. Keeping in mind that the time available to the court was limited, the court constituted a committee to undertake the process of monitoring on its behalf of the court.

In *J. P. Rao* v. *Union Of India, rep, by its Secretary, Home Department, New Delhi*,[56] the PIL before the High Court of Andhra Pradesh sought a declaration that the action of the Union of India to bifurcate the State of Andhra Pradesh into State of Telangana and Andhra Pradesh based on the letters/resolutions of the political parties without eliciting the expression of the people of the state amounted to violation of the provisions of the Constitution of India and also an aggression on the popular sovereignty of the people of the state by the Union of India; and that the article 3, article 355 and article 356 of the Constitution of India offended the popular sovereign power of the people due to their misuse by the Union of India and were liable to be repealed. The high court held that the action of bifurcation of State of Andhra Pradesh was a purely legislative action with mechanism as contemplated therein and was within parameters of article 3 of Constitution of India. Accordingly, such action was not in violation of any of provisions of Constitution of India. The high court held further that no part of the original provisions of the Constitution could be challenged before the court of law nor could the same be struck down by the court of law. The proper course was to take recourse to the amending power of the Parliament under article 368 subject to compliance with the basic structure theory. The high court therefore dismissed the PIL.

IX PIL AND EDUCATION

In *Ashith Karthik Rao* v. *State of Karnataka*,[57] the grievance in the PIL before the High Court of Karnataka was that the respondent schools were denying admission to children in violation of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) by wrongly claiming to be minority institutions and outside the purview of the RTE Act. The high court noted that the respondent schools did not produce any declaration or certificate issued by any authority in support of their claim that they were the minority educational institutions. The respondent schools did not even produce the statement of admissions to show that they have been admitting mainly those children who belong to minority. The high court observed that there appeared to be more of non-minority students in the schools, which were purportedly established and being administered for the purpose of minority. The high court held that the schools could deny admission to the petitioning students out of school as it would be in breach of their fundamental right to education guaranteed under article 21A of the Constitution of India.

56 2014 (3) ALD 670.

57 2014 (4) AKR 429.

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Moreover, the admission of the petitioning children would not put the managements of the schools in question to any loss, because the state government has fairly come forward to reimburse the fees of the petitioning children. The high court accordingly allowed the PIL.

X PIL AND RELIGIOUS INSTITUTIONS

In *Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*,[58] the PIL before the High Court of Rajasthan *inter-alia* sought a declaration "that the Galta Peeth/ Thikana, its temples and properties are public properties and not private or individual properties and it may be dealt with in the manner public properties are dealt with"; and the State Government should be directed to take over control and management of the temples and properties of the Galta Peeth/Thikana and appoint a Board to manage the properties and temples of the Galta Peeth in line with the Vaishno Devi Shrine or Tirupati Balaji Temple or in any other manner which the court may deem fit and proper. The high court found that the issues raised in the PIL were pending consideration before the Assistant Commissioner, Devasthan Department in the statutory enquiry under the Rajasthan Public Trust Act 1959. The high court disposed of the PIL holding that the issues raised would be decided by the Assistant Commissioner, Devasthan Department after hearing all the parties, and that the assistant commissioner would record his finding by a speaking order. Upon appeal, the Supreme Court held that "the scope of Public Interest Litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of Public Interest Litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and their management thereof. It is not proper for the Court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regard the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may heart the sentiments of the other. The Courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the Courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed."

58 Supra note 10.

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XI PIL AND SERVICE LAW

In *Consumers Guidance Society* v. *Government of Andhra Pradesh*,[59] three PILs before the High Court of Andhra Pradesh claimed the identical relief of a writ of *mandamus* or *quo warranto* for quashing the order of extension of services of the named Chief Secretary to the Government of Andhra Pradesh who was about to attain superannuation on completion of 60 years. During his tenure as the Chief Secretary to the State Government, there have been adverse remarks against his functioning, which were more glaring when the Supreme Court pointed out the same in a judgment. Instead of allowing the concerned officer to retire, the state government had hastily issued the impugned order granting four months extension to him, despite eligible officers being available to occupy that post. The high court reviewed the case law to hold that except for a writ of *quo warranto*, PIL was not maintainable in service matters, and that for the issuance of a writ of *quo warranto*, the court had to be satisfied that the appointment was contrary to the statutory rules. Assessing the suitability or otherwise of a candidate for appointment to a post in government service was the function of the appointing authority and not of the court unless the appointment was contrary to statutory provisions/rules. The court declined to issue the writ of *quo warranto* as it found no illegality or unconstitutionality in issuing the order of extension.

In *Menghani Bhai* v. *Union of India*,[60] the PIL before the High Court of Kerala sought the writ of *quo warranto* declaring the appointment of named respondent to the post of Director, National Waterways Road, Maradu, Kochi as illegal and erroneous for contravening provisions of regulations of recruitment. The eligibility criteria in terms of the regulations for direct recruitment prescribed the maximum age limit for the post of director as 45 years; the named respondent was being 56 years at the time of appointment. Even the selection committee for recruiting the director, which ought to have comprised three members, consisted of only two members. At the time of appointment, there was no proper vigilance clearance for the named respondent as mandated. The high court found that such appointment was "a mala fide exercise of power indicating manifestation of abuse of power", and allowed the PIL holding that the post held by the said respondent was a public post and his appointment was not in conformity with the existing rules and regulations, jeopardizing the interest of public at large.

In *Madan Lal* v. *High Court of Jammu & Kashmir*,[61] the PIL before the High Court of Jammu & Kashmir had challenged the appointment and selection made by the high court for post of district and sessions judge borne on cadre of service constituted under the Jammu and Kashmir Higher Judicial Service Rules, 1983. The high court had found no merit in the case. On appeal, the Supreme Court upheld the view of the high court. The Supreme Court referred to the guidelines to be followed for entertaining PIL based on full court decision dated December 12,

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59 AIR 2014 AP 106.

60 2014 (2) KLJ 491.

61 AIR 2014 SC 3434.

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1998 with subsequent modifications based on orders dated 19.08.1993 and 29.08.2003 of the Chief Justice of India, in terms of which PIL is not maintainable in service matters. The Supreme Court cited its earlier decisions wherein it had been reiterated that except for a writ of *quo warranto*, PIL was not maintainable in service matters, and dismissed the appeal on this ground as well.

XII PIL AND ALTERNATE REMEDY

In *Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*,[62] the PIL before the High Court of Rajasthan inter-alia sought a "declaration that the Galta Peeth/ Thikana, its temples and properties are public properties and not private or individual properties and it may be dealt with in the manner public properties are dealt with"; and the State Government should be directed to take over control and management of the temples and properties of the Galta Peeth/Thikana and appoint a Board to manage the properties and temples of the Galta Peeth in line with the Vaishno Devi Shrine or Tirupati Balaji Temple or in any other manner which the Court may deem fit and proper. The High Court found that the issues raised in the PIL were pending consideration before the Assistant Commissioner, Devasthan Department in the statutory enquiry under the Rajasthan Public Trust Act 1959. The High Court disposed of the PIL holding that the issues raised would be decided by the Assistant Commissioner, Devasthan Department after hearing all the parties, and that the assistant commissioner would record his finding by a speaking order. The PIL petitioner impleaded himself in the applications pending before the assistant commissioner, and then appealed to the Supreme Court against the disposal of the PIL. The Supreme Court held that the petitioner could not be permitted to avail two remedies simultaneously, and such conduct of the petitioner is abuse of process of court. The court held that while "mere availability of alternative remedy cannot be a ground to reject the relief in a Public Interest Litigation, but in the facts and circumstances of the case, namely the history of the case, right from 15th century, the long standing litigation, the voluminous record, etc. involving disputed questions of facts and law…adjudication of such disputes is not possible in a Public Interest Litigation, and the remedy is to get such disputes adjudicated by a fact finding authority as enumerated under the Act, which remedy is not only alternative, but also effective, because the parties can put a quietus to the litigation once for all." The court, accordingly, affirmed the view of the high court relegating the parties to the assistant commissioner, before whom the applications were pending adjudication.

XIII MISUSE OF PIL

In *G. Pravina* v. *Narendra Modi & Director General of Police*,[63] the PIL before the High Court of Bombay sought a mandamus directing the Director General

62 *Supra* note 10.

63 (2014) 5 MLJ 421.

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of Police, Gujarat to take action against the then Prime Ministerial candidate of the BJP, Narendra Modi, so as to require him to take back his wife, to provide her dignified life, ensuring freedom of liberty, speech and expression and equal status as his wife "in the best interest of the Nation, Women and Future generation." As the PIL was based on newspaper reports, the high court referred to the case law to hold that a news item published in the newspaper are only hearsay and no judicial notice can be taken unless supported by further authentic evidence. The high court dismissed the PIL holding that "a complaint of desertion has been made by a third party, claiming herself to be pro bono litigant" and that the guise of PIL, "she has no right to invade into the privacy of any individual, make wild allegations, as if, an offence relating to marriage, has been committed." The court observed that PIL "has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together…It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenue expecting their release from the detention orders etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system."

In *People's Forum through its Convener Dr. Nutan Thakur* v. *C.B. Yadav, Additional Advocate General Govt. of Uttar Pradesh*,[64] four PILs before the High

64 2014 (4) UPLBEC 2969.

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Court of Allahabad were filed by people's forum through its convenor seeking a writ of *quo-warranto* directing the additional advocate general to immediately vacate the administrative charge of the post of advocate general pursuant to an order of the state government, a writ of *mandamus* for enforcing the provisions of the Indian Administrative Service (Cadre) Rules, 1954 as amended in 2014 and the Indian Police Service (Cadre) Rules, 1954 as amended in 2014, a writ of mandamus directing the Union of India through the Secretary, Ministry of Law and Justice as well as the Union of India through the Principal Secretary to the President of India to immediately stop all further appointments of the Judges of the Supreme Court and of the high courts through what is described in the petition as a "so-called collegium system which has been turned down by Parliament of India", and to make further appointments only in accordance with the provisions of the National Judicial Appointments Bill, 2014 and the 121st Constitutional Amendment Bill, 2014; and a writ of mandamus directing the registry of the court to entertain all PIL filed by the people's forum, either through its convener or through anyone else without applying the judicial order passed by a division bench of the court on April 11, 2014 in an earlier PIL.

The high court noted that on 11 April 2014, a division bench of the court had heard the earlier PIL filed by the petitioner in person challenging the validity of the Special Protection Group Act, 1988 enacted for the constitution and regulation of an armed force of the Union for providing proximate security to the Prime Minister of India, former Prime Ministers of India and members of their immediate families and for matters connected therewith. The division bench held that the petition was entirely baseless and had been filed with an oblique purpose of seeking publicity. The division bench recorded that the court was informed that the petitioner has filed as many as 140 writ petitions styled as 'public interest cases'. Details of those writ petitions were placed on the record of the order that was passed on April 11, 2014. It appeared that the petitioner raised issues within a few days when any social or political issue attracted the attention of the media. Almost all the writ petitions were filed without any research or material, and were based only on the newspaper reports. Most of the writ petitions were not in public interest but covered almost every subject covered by media to be topical. The division bench held that in order to save the court from "the tsunami of writ petitions filed by the petitioner who appear almost every other day in Court touching matters which hits the headline, treating it as public interest…the registry of the Court will not entertain any writ petition in public interest from Dr Nutan Thakur - either in person or through counsel (either as petitioner or co-petitioner) unless the petition, filed by her, accompanies a demand draft of Rs. 25,000/- (Twenty Five Thousand)". The Division Bench held that "at the time of admission of the writ petition, if the Court considers that the petitioner has raised a matter which is genuine and bona fide and in public interest, the demand draft deposited by her may be returned to her" and that "in case it is found by the Court that the Writ Petition filed by her does not involve any public interest and the writ petition is dismissed, the amount in the demand draft deposited by her will be treated as costs imposed on her, and the amount will be credited in the account of the High Court Legal Services Committee at Lucknow to be spent for activities of the Legal Services Committee of the High Court."

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The high court noted that the petitioner now filed the four PILs through people's forum of which she was the convenor, which included the relief that the court should entertain all PILs filed through the people's forum without insisting on compliance of the order passed by the division bench of the court on April 11, 2014. The high court examined the deed of declaration constituting the people's forum and found that this device was only to circumvent compliance with the order passed by the division bench on April 11, 2014. The high court held that it was necessary to ensure that the jurisdiction in public interest was exercised carefully and for the purpose of entertaining genuine causes. While access to justice to citizens was a seminal constitutional precept, the right of access to justice had to be carefully safeguarded. Access to justice could not be used as a charter for abuse. When a citizen utilised the jurisdiction of the high court by tormenting the judicial process with repeated PILs, motivated by a desire to seek publicity or to achieve extraneous purposes, it was necessary for the court to deal with these abuses. In doing so, the court protected its own institutional credibility as much as it protected the right of access to justice to others. Time consumed in determining fruitless cases filed only with a motivation to generate publicity or for oblique motives, deprived the court of valuable judicial time that should be spent in devoting attention to the genuine problems of other citizens who wait in long queues for their cases to be heard. Access to justice was not merely for a litigant who approached the court in a PIL but a valuable right which was available to all litigants. Where the process of the court was found to have been abused, not merely was the court not powerless to handle such a situation but it was its constitutional duty to ensure that the due process was not deflected by an abuse of its process. The high court, therefore, dismissed the PILs, leaving it open to the petitioner to seek recourse to the jurisdiction of the court in public interest on the same writ petitions afresh albeit after complying with the conditions imposed in the order dated April, 11 2014.

In *K. Subramanyam Sastry* v. *Union of India*,[65] the PIL before the High Court of Karnataka sought a direction to the respondent authority to probe into the illegally exported iron-ore in collusion with mining mafia to the tune of crores by a particular person heading a company without any authority under law and valid legal papers. The high court found that the petitioner had earlier filed a writ petition against the same person alleging certain sales in contravention of the accounting standards and seeking for a direction to the CBI to reverse the inflated sales and to expedite the investigation to expose the said person. The high court had disposed of the said writ petition with observation that it was not possible for the court to entertain prayers of such nature. The petitioner, thereafter, preferred a petition under section 482 of the Cr PC praying for a similar relief, which had also been dismissed. The high court found further that the advocate for the petitioner in the present PIL was a dismissed employee of concerned company for major misconduct, and there was litigation between them in this regard. The court noted that the

65 2014 (4) AKR 209.

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advocate for the petitioner was in the habit of approaching various forums, including the high court by filing frivolous and vexatious applications on one pretext or the other so as to see to it that the productive time of the executives of the said company was spent unproductively and with an ulterior motive to damage the reputation of the said company. There were three criminal cases against the said advocate pending before the magistrate for offences punishable under sections 292(a), 294, 416, 419, 448, 503, 504, 506, 507 and 509 of IPC, where trials were in progress. These cases related to making threatening calls, misbehaving with the security personnel posted at the premises of the company and for having sent obscene messages to the vigilance portal of the company against the then lady chief vigilance officer, who was on deputation from the Indian railways. Apart from the above, another FIR was registered against the said advocate for giving false information to the police that the company was burning the records/documents pertaining to a case pending before the high court. The advocate also filed 119 applications and also many numbers of appeals under the RTI Act with respect to the company. The advocate, in his personal capacity, had made allegations, very similar to those in the instant PIL, in his letter to the Additional Director-General of Police, Crime Investigating Department, Hyderabad.

The high court concluded that in view of the undisputed facts about the litigations initiated by the petitioner against the same company on different occasions and for different reliefs, the PIL was inspired by personal motive of the petitioner and his advocate. the high court dismissed the PIL only on the ground of lack of *bona fides* and *locus standi*, with costs of Rs 5000/-.

In *Niloo Ranjan Kumar* v. *Union of India*,[66] the PIL before the High Court of Delhi sought a direction to the CBI to investigate the admission process conducted by the Santosh Medical College, Ghaziabad (UP); a direction for appointment of a committee to supervise the admission process conducted by all private medical colleges; de-recognition of the Santosh Medical College as a medical institute providing medical education; and, a direction to the Medical Council of India to strike off the name of a named respondent from the medical register. The high court noted that while the petitioner claimed to be working in the field of investigative journalism and purported to raise the issue of private medical colleges admitting students who were not eligible for admission to the MBBS course, a reading of the PIL left no manner of doubt that the same was directed primarily against the Santosh Medical College and the named individual. Such petition filed in public interest and targeted at a particular person always invited suspicion. The petitioner was unable to explain the reason to investigate only the said college and person. The PIL contained no specific averment against any other college or any wrongful admission made. The high court dismissed the PIL, while requiring the petitioner to annex a copy of this order in any future PIL filed by him.

66 2014 (212) DLT 522.

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In *Sambhaji Savkar Jadhav* v. *Insurance Regulatory and Development Authority*,[67] the three PILs before the High Court of Bombay pertained to alleged violation of guidelines for Foreign Direct Investment (FDI) particularly by Future Generali Life Insurance Company Ltd. The respondents asserted that the petitioner was only a front put up by his lawyer, who was an employee of Future Generali and was dismissed from service. The PILs were, therefore, filed out of vendetta to take revenge of such dismissal. The high court found that the petitioner could not be considered as a person having sufficient interest in the proceedings of the PILs and that not merely from the allegations made in the petitions but also the tenor of allegations and the manner in which the allegations were made and prayers were framed, the PILs were coloured by the personal prejudice of the advocate for the petitioner who was himself a dismissed employee of Future Generali. Since it could not be said that in filing the PILs, the petitioner was acting *bona fide* and had sufficient interest in the proceedings, the high court dismissed the PILs.

In *Diwakar Tyagi* v. *State of U.P.*,[68] the PIL before the High Court of Allahabad sought a *mandamus* to the state, the district magistrate and the Moradabad Development Authority to demolish what was stated to be illegal encroachments made on the streets and roads passing through Dev Vihar Colony. The PIL sought a mandamus for the exercise of statutory powers vested in the authority under the Uttar Pradesh Urban Planning and Development Act, 1973. A mandamus was also sought for the removal of alleged illegal constructions and encroachments on the streets and roads so as to enable the persons residing in Naya Gaon to pass through Dev Vihar Colony, Moradabad. The high court noted that a PIL had been filed earlier before the court seeking similar reliefs, which had been dismissed on the ground that the issue of some encroachment in Dev Vihar Colony has been raised by the petitioner in that case only with a view to invite interference of the court. A representation to the authorities made by that writ petitioner was part of the record in the present PIL. The high court found that the present PIL bore personal interest of the petitioner to get connection between his plot with Dev Vihar Colony, which was a developed colony secured by boundary wall and gates. The court held that the jurisdiction in the present PIL had not been invoked *bona fide* and that the PIL was an abuse of the process of the court. The court dismissed the PIL with costs of Rs 15,000/- as it opined that it was a fit and proper case "to send a message that misuse of the jurisdiction in the public interest would not be countenanced."

In *Mithlesh Kumar Singh* v. *Union of India*,[69] the PIL before the High Court of Delhi sought a direction to the Ministry of Railways, Railway Board, Prime Minister Office, Lok Sabha Secretariat, the Director, CBI and the Planning Commission of India to provide the details of documents relating to purchase of jacks, appointment of candidates in the Railway Recruitment Board, Patna, financial

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67 [2014] 186 Comp Cas 1.

68 2014 (3) ADJ 761.

69 2014 (213) DLT 40.

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irregularities in extension of railway line and scam in procurement of concrete sleepers in Railways during the tenure of a former Union Minister for Railways; and a direction to the Director, CBI to register the case against the said Minister and his other associates. The high court noted that the petitioner had, on the same facts, filed another writ petition earlier, which was dismissed, accepting the version of the respondents that the matter had been referred to CBI for investigation and the CBI had not found any substance in the matter and had submitted report that no action was warranted in the case and which report was ultimately accepted. Upon review, the court was shown in confidence by the Railways the records, and on perusal thereof the court recorded that the same disclosed that a CBI inquiry had indeed been conducted and the report of the CBI was placed before the Standing Committee of the Railways. Despite the dismissal of the review, the petitioner filed the instant PIL yet again seeking the same relief. The high court dismissed the PIL targeting the said Minister on the ground that the petitioner was not entitled to second or third round of litigation on the same aspect, as was being sought to be done.

In *Raj Kumar Sharma* v. *Union of India*,[70] the PIL before the High Court of Delhi sought a writ of *quo warranto* removing the persons holding the post of Chairman, Adviser (Approval) and Adviser-I & CVO of the All India Council for Technical Education (AICTE); a writ of *mandamus* directing the Union of India to re-constitute the Selection Committee for filling up the posts of Technical Education (Financial Adviser and Group 'A' Technical Posts); a direction for appointment of Chairman and other members of the Board of Studies of AICTE on the basis of All India Selection; a direction for filling up the posts in the AICTE on regular basis; a direction commanding the Comptroller and Auditor General of India to look into the accounts of the AICTE; and an inquiry into the acts of the said persons by an independent agency like the CBI.

The high court noted that the petitioner, a resident of Agra, claimed to be a law graduate, and there was no explanation whatsoever of the basis of his knowledge of the facts pleaded in the petition or of his concern with the affairs of the AICTE. When such an unconcerned person files a petition directed at someone, purportedly in public interest, the same raised doubts. The high court found that the counsel for the petitioner had sought similar relief, unsuccessfully, before the Central Administrative Tribunal (CAT) and in the writ petition arising therefrom. Notwithstanding the same, the factum of the proceeding before CAT and/or of filing of the writ petition was not disclosed in the present PIL. The high court held that the principles qua PILs mandate a complete disclosure, and that it was evident that the petition was motivated. Moreover, except for a writ of *quo warranto*, PIL was not maintainable in service matters. The high court dismissed the PIL with costs of Rs.20,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

In *Sushil Kumar Mishra* v. *Union of India Through Secretary*,[71] the PIL before the High Court of Allahabad was filed by a practicing advocate claiming to

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70 2014 (211) DLT 255.

71 2014 (8) ADJ 368.

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be a tax payer "who has a vital interest in spiritual belief". The PIL sought a mandamus for the deletion of an objectionable dialogue and scene in the cinematographic film "Singham Returns" and an order to restrain the release of the film. The PIL was based on a promo which has been uploaded on YouTube. The co-producer and distributor of the film filed the affidavit in the PIL stating that the trailer of the film was certified by the Board of Film Certification constituted under section 3 of the Cinematographic Act, 1952, and that thereafter, following protests made by the religious groups, the objectionable dialogue was deleted from the film. In light of the deletion of the objectionable dialogue, the court dismissed the PIL, while noting that it has now become a common practice for injunction applications to be moved before the court on the eve of the release of a cinematographic film and that the courts under article 226 of the Constitution must be careful in entertaining requests for granting a stay at such a belated stage.

In *K. R. Ramaswamy* v. *Secretary*,[72] the PIL before the High Court of Madras sought a writ of *mandamus* to direct the respondents to consider and pass appropriate orders on his representation to the State Chief Minister "for providing security and safety to the citizens of Tamil Nadu and ensure the fundamental rights guaranteed under Article 19 and 21 are complied in the present situation which is in question in the state of Tamil Nadu, within stipulated time period as may be fixed by this Court". The PIL asserted in his representation to the chief minister that she was the nodal authority of the mechanism set-up by the Whistle Blowers Protection Act, which stood defeated with her being charge-sheeted with corruption charges. The PIL pleaded that the governor was duty bound to consider whether there was a proper candidate for the post of chief minister and that it was for the governors of the states to ensure that the chief ministerial candidate served the purpose of a corruption free democracy. The PIL sought "a writ of mandamus, or guidelines ensuring that the legitimate expectation of a citizen who is having an elected Chief Minister would also be to have a Chief Minister who is without corruption/criminal charges against him/her or a person who accepts a convicted criminal as his undisputed leader can still occupy position as Chief Minister or can be invited by the governor of Tamil Nadu to be the chief minister while professing unquestionable allegiance to a convicted criminal who is the life long party chief of A.I.A.D.M.K."

The high court, taking note of the fact that the petitioner filed the PIL on the same day he made his representation, and that the petitioner had filed a number of PIL matters, took the view that the PIL had been filed primarily for gaining media publicity and suffers from other "defects, such as, vagueness, impracticable relief, etc., which certainly cannot be entertained." The high court dismissed the PIL "with costs of Rs. 25,000/- for having wasted the valuable judicial time which could be otherwise utilized for disposal of genuine cases." The high court directed that "such deposit is made, the Registry is directed to remit the same towards Jammu and Kashmir Flood Relief Fund forthwith" and that "in case the cost is not

72 (2014) 7 MLJ 257.

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deposited within the time stipulated, the Registry is directed to recover the same by coercive means". The high court also directed the registry "to be careful while numbering the petitions (if any) being filed by the petitioner in future and enclose the earlier orders of this Court, wherein costs were imposed."

In *R. P. Luthra* v. *CBI,*[73] the PIL before the High Court of Delhi sought a *mandamus* directing the CBI to register a case and to undertake investigation in accordance with law on the basis of the statements in a blog (website) about the continuation of an additional judge in High Court of Madras. The PIL pleaded that the statements in the said blog disclosed the commission of various cognizable offences including the offences under the Prevention of Corruption Act, 1988 and sections 217 and 218 of Indian Penal Code, 1872 relating to screening of offenders and therefore, the authorities concerned ought to have initiated action as required under sections 154 or/and 157 of the Code of Criminal Procedure, 1973. The high court found that the validity of the permanent appointment of the Additional Judge of Madras High Court, whose extension of term as Additional Judge was referred to in the blog, had in fact been considered by the Supreme Court in another PIL, and that such decision set at rest the controversy relating to the extension of the term of the said additional judge. Moreover, the said judge had retired on attaining the age of superannuation and had expired shortly thereafter. The high court observed that it was unable to understand as to how the matter involved public interest to direct an investigation by CBI at that stage that too, on the basis of the statements made on a blog. The high court held that a 'blog' was nothing but a personal website that allowed the users to reflect, share opinions and discuss various topics in the form of an online journal and sometimes letting the readers to comment on their posts. The statements in a blog were only the personal opinion of the user and could not take the place of evidence. The high court noted that even the newspaper reports have been held to be only hearsay evidence and not one of the documents referred to in section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. As the court could not take judicial notice of the facts stated in a news item published in a newspaper, the same analogy applied to the statements in a blog. The high court reiterated "the well settled principle of law that the Courts should be fully satisfied that substantial public interest is involved before entertaining the petition filed as a PIL and that the Courts before entertaining the PIL should ensure that the same is aimed at redressal of genuine public harm or public injury. The petitioner should be in a position to demonstrate that he is moving the process of law for the benefit of unrepresented or under-represented strata of the society."

In *Anil K. Aggarwal* v. *Union of India,*[74] the PIL sought a direction from the High Court of Delhi requiring "the courts, tribunal and other judicial authorities within its jurisdiction to appoint notaries registered and holding valid certificate of practice issued under the Notary Act, 1952 to act and function as Commissioner

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73 2014 (215) DLT 108.

74 2014 (146) DRJ 525.

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for recording of evidences in any civil or criminal trial; and not to appoint any advocate / legal practitioner or retired or serving judicial officer, who is not a notary to act and function as Commissioner for recording of evidences in any civil or criminal trial". The PIL further sought the quashing of "all appointments of advocate / legal practitioner or retired or serving judicial officer, who is not a notary, made by any courts, tribunal and other judicial authorities" functioning within the jurisdiction of the High Court of Delhi. The high court examined the scheme of the CPC and the Delhi High Court (Original Side) Rules 1967 to hold that the petition was not only bereft of any merit but highly misconceived and has been preferred without regard to the relevant provisions and the law. The court found that the petition, though filed as a PIL, without any personal interest and without being for the benefit of any person, appeared to have been filed at the behest of the persons appointed as Notaries who may be apprehending reduction in their work with the recent announcement by the Prime Minister of the introduction of the process of self- attestation, and with an intent to corner unto themselves the work of recording of evidence on commission. Accordingly, the high court dismissed the petition with costs of Rs.2, 000/- payable to the Delhi High Court Legal Services Authority.

XIV CONCLUSION

The courts have, in the year under survey, reiterated the settled principles on the scope and ambit of Indian PIL, and have been extremely vigilant to check its misuse, adopting measures like requiring the petitioner to enclose in any other PIL filed by him the copy of the order imposing costs on him, or requiring the Registry to attach to a PIL at the time of numbering, the copies of orders passed in earlier PILs filed by that particular petitioner found to be misusing the process. Indian PIL continues to attract attention across the world. It suggests to emerging democracies, which are generous in theoretically conferring human rights coupled with repressive state machinery, which the presence of a judicial will to protect human rights can result in the delivery of justice in concrete terms to the poor and the bewildered. It offers an alternative paradigm to developed nations where the costly and complex legal procedure effectively blocks access to justice to those without a lawyer. Indian PIL conveys the message that by providing easier citizen access directly to the courts, the legal system would be more sensitized to the needs and wants of society, and would be compelled to innovate in order to ensure that the human rights of the citizens are respected.

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