CASE NO.:
Writ Petition (civil) 580 of 2003

PETITIONER:
Common Cause (A Regd. Society)

RESPONDENT:
Union of India and others

DATE OF JUDGMENT: 11/04/2008

BENCH:
Markandey Katju

JUDGMENT:
J U D G M E N T
REPORTABLE

Writ Petition (Civil) No. 580 of 2003

Markandey Katju, J.

1. This writ petition under Article 32 of the Constitution furnishes a typical illustration of how public interest litigation which was conceived and created as a judicial tool by the courts in this country for helping the poor, weaker and oppressed sections of society, who could not approach the court due to their poverty, has over the years grown and grown, and now it seems to have gone totally out of control, and has become something so strange and bizarre that those who had created it probably would be shocked to know what it has become.

2. The petitioner is a society registered under the Societies Registration Act which claims to be engaged in espousing problems of general public importance.

3. In the present case, the petitioner has referred to the rising number of road accidents in the country which are taking place in cities, towns and on national highways causing deaths, injuries etc. The petitioner has referred to the defects in the licensing procedure, the training of drivers, and the need for suspending licences in case of negligent driving, and driving under the influence of alcohol, which cause accidents etc. He has also referred to the inadequate infrastructure relating to roads and inadequate provisions of traffic control devices including traffic signals, traffic signs, road devices and other road safety measures. It has been stated in the petition that there should be proper and continuous coordination between various authorities which are connected with roads and control of traffic, and for this purpose the only appropriate remedy is to establish Road Safety Committees. The petitioner has also emphasized the need for having readily available ambulances for shifting the injured persons in road accidents to hospitals for immediate treatment.

4. The petitioner has also stated that there should be road safety education for the users of roads, pedestrians, traffic participants including cyclists, handcarts men, bullock- cart drivers etc., who generally have low socio-economic and educational background and do not know traffic rules and regulations. The petitioner has alleged that pedestrians and non-motorized traffic face enormous risks as they account for 60% to 80% of road traffic fatalities in the country. All non-motorized traffic need to be given thorough and repeated orientation in observance of road traffic rules and avoidance of any situations which can cause accidents. These road safety education programmes can include written material for those who are literate and also illustrations, slides, specially prepared films, and also

publicity though the medium of TV and radio.

5. The petitioner has also alleged that there is a paramount need for enactment of a Road Traffic Safety Act to lay down regulations dealing with specific responsibilities of drivers, proper maintenance of roads and traffic-connected signs and signals etc., and all rules and regulations for observance by all concerned including pedestrians and non-motorized traffic. The Road Traffic Safety Act should contain all the regulations and the requirements relating to avoidance of accidents, responsibilities of respective Departments of State Governments, Municipal bodies, Police authorities, and the penalty for non-observance of prescribed regulations. The Act should specify the duties, responsibilities, rights, directives and punishments in case of failures by any one e.g. driver, vehicle, road user, etc.

6. The petitioner has alleged that the number of accidents has increased greatly over the years in India and hence he has filed this writ petition with the following prayers:

(i) to issue a Writ, direction or order in the nature of mandamus and /or any other writ, direction or order directing respondent No.1 (the Union of India) in consultation with representatives of respondent Nos. 2, 3, 4, 5 & 6 (the Government of NCT of Delhi, and the State Governments of Maharashtra, Tamilnadu, West Bengal and Karnataka) and also representatives of other States/UTs :-

(a) to set up fully satisfactory procedures of licensing of vehicles and licensing of drivers, for ensuring that the vehicles are fully equipped with all the safety travel requirements, and also ensure that drivers of private vehicles as well as drivers of public vehicles including buses and trucks, are fully trained and are competent to drive the respective types of vehicles, and also to organize high-level training arrangements for the drivers of respective types of vehicles; appropriate procedures for suspension/cancellation of driving licenses in the event of any default or for involvement in any accident;

(b) to ensure provision of all infrastructural requirements of roads, including signs, signals, footpaths, repairs of roads, and all such other requirements which will help to minimize risks of accidents on the roads;

(c) to set up methodology and requirements for undertaking scientific analysis of every accident, for ensuring that similar causes do not recur which can lead to accidents, thereby minimizing the possibilities of accidents;

(d) to establish suitable organizations for providing education to all types of users of roads, through experts as well as use of suitably devised visual and audio media;

(e) to ensure the availability of ambulances for immediate removal of injured persons to hospitals;

(f) to set up Committees of Experts in each State/UT and in the bigger cities for dealing with these various requirements for minimization of accidents on the roads;

(ii) to direct respondent No. 1 to formulate a suitable Road Traffic Safety Act to meet effectively the various requirements for minimization of road accidents; and

(iii) to pass such other and further orders as may be deemed necessary to deal effectively with the various matters relating to traffic safety on the roads and minimization of road accidents, on the facts and in the circumstances of the case.

7. Shri Prashant Bhushan, learned counsel for the petitioner has relied on the decision of the three Judge Bench of this Court in M.C. Mehta vs. Union of India AIR 1998 SC 190 in which the following directions have been given:

"A. the Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following:

(a) No heavy and medium transport vehicles, and light goods vehicle being four wheelers would be permitted to operate on the roads of the NCR and NCT, Delhi, unless they are fitted with suitable speed control devices to ensure that they do not exceed the speed limit of 40 KMPH. This will not apply to transport vehicles operating on Inter-State permits and national goods permits. Such exempted vehicles would, however, be confined to such routes and such timings during day and night as the police/transport authorities may publish. It is made clear that no vehicle would be permitted on roads other than the aforementioned exempted roads or during the times other than the aforesaid time without a speed control device.

(b) In our view the scheme of the Act necessarily implies an obligation to use the vehicle in a manner which does not imperil public safety. The authorities aforesaid should, therefore, ensure that the transport vehicles are not permitted to overtake any other four-wheel motorized vehicle.

(c) They will also ensure that wherever it exists, buses shall be confined to the buss lane and equally no other motorized vehicle is permitted to enter upon the bus lane. We direct the Municipal Corporation of Delhi, NDMC, PWD, Delhi Government and DDA, Union Government and the Delhi Cantt. Board to take steps to ensure that bus lanes are segregated and roads markings are provided on all such roads as may be directed by the police and transport authorities.

(d) They will ensure that buses halt only at bus stops designated for the purpose and within the marked area. In this connection also Municipal Corporation of Delhi, NDMC, PWD, Delhi Cantt. Board would take all steps to have appropriate bus stops constructed, appropriate markings made, and 'bus-bays' built at such places as may be indicated by transport/police authorities.

(e) Any breach of the aforesaid directions by any person would, apart from entailing other legal consequences, be dealt with as contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the vehicle.

(f) Every holder of a permit issued by any of the road transport authorities in the NCR and NCT, Delhi will

within ten days from today, file with its RTA a list of drivers who are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorized driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorized driver shall be treated as being used in contravention of the permit and the consequences would accordingly follow.

No bus belonging to or hired by an educational institution shall be driven by a driver who has

- less than ten years of experience;
- been challaned more than twice for a minor traffic offence;
- been charged for any offence relating to rash and negligent driving.

All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.

(g) To enforce these directions, flying squads made up of inter-departmental teams headed by an SDM shall be constituted and they shall exercise powers under Section 207 as well as Section 84 of the Motor Vehicles Act.

The Government is directed to notify under Section 86(4) the officers of the rank of Assistant Commissioners of Police or above so that these officers are also utilized for constituting the flying squads.

(h) We direct the police and transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorized and non-motorized vehicles using the same roads. For this purpose, we direct the police and transport authorities to identify those roads which they consider appropriate to be confined only to motorized traffic including certain kind of motorized traffic and identify those roads which they consider unfit for use by motorized or certain kinds of motorized traffic and to issue suitable directions to exclude the undesirable form of traffic from those roads.

(i) The civil authorities including DDA, the railways, the police and transport authorities, are directed to identify and remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement. In addition, steps be taken to put up road/traffic signs which facilitate free flow of traffic.

B. We direct the Union of India to ensure that the contents of this Order are suitably publicized in the print as well as the electronic media not later than November 22, 1997 so that everybody is made aware of the directions contained in the Order. Such publication would be sufficient public notice to all concerned for due compliance".

8. In our opinion the prayers made by the petitioner in this petition require us to give directions of a legislative or executive nature which can only be given by the legislature or executive. As held by this Court in Divisional Manager, Aravali Golf Course & Anr. vs. Chander Hass, JT 2008(3) SC 221, the judiciary cannot encroach into the domain of the

legislature or executive. The doctrine of separation of powers has been discussed in great detail in the aforesaid decision, and we endorse the views expressed therein.

9. We are fully conscious of the fact that the decision cited by Shri Prashant Bhushan viz. M.C. Mehta vs. Union of India (supra), is a decision of a three Judge Bench of this Court and would ordinarily have been binding on us since our Bench consists of two Judges. However, a subsequent seven Judge Bench decision this Court in P. Ramachandra Rao vs. State of Karnataka 2002(4) SCC 578 has taken the view that such directions cannot be given. In para 26 of the aforesaid decision of the seven Judge Bench in P. Ramachandra Rao's case (supra), it was observed:

"Professor S.P. Sathe, in his recent work (year 2002) Judicial Activism in India - Transgressing Borders and Enforcing Limits, touches the topic "Directions: A new Form of Judicial Legislation." Evaluating legitimacy of judicial activism, the learned author has cautioned against court "legislating" exactly in the way in which a legislature legislates and he observes by reference to a few cases that the guidelines laid down by court, at times, cross the border of judicial law-making in the realist sense and trench upon legislating like a legislature.

"Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. The court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court"

"In a strict sense these are instances of judicial excessivism that fly in the face of the doctrine of separation of powers. The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. Broadly, it means that one organ of the State should not perform a function that essentially belongs to another organ. While law-making through interpretation and expansion of the meanings of open-textured expressions such as 'due process of law', 'equal protection of law', or 'freedom of speech and expression' is a legitimate judicial function, the making of an entirely new law...through directions....is not a legitimate judicial function".

(emphasis supplied)

10. The aforesaid seven Judge Bench decision of this Court in P. Ramachandra Rao's case (supra) has referred with approval the observations made in the book 'Judicial Activism in India \026 Transgressing Borders Enforcing Limits' by Prof. S.P. Sathe. In that book the learned author has referred to the directions of a legislative nature given by various two Judge and three Judge Bench decisions of this Court in P.I.Ls. The learned author has remarked that these were not legitimate exercise of judicial power.

11. The position has thus been clarified by the seven Judge Bench decision of this Court in P. Ramachandra Rao's case (supra) which has clearly observed (in paras 22-27) that giving directions of a legislative nature is not a legitimate judicial function. A seven Judge Bench decision of this Court will clearly prevail over smaller Bench decisions.

12. In P. Ramachandra Rao's case (supra), the question considered by

the seven Judge Bench was whether the bar of limitation for criminal trials fixed by smaller Benches of this Court in Common Cause vs. Union of India, 1996(4) SCC 33, Rajdeo Sharma (I) vs. State of Bihar 1998(7) SCC 507 and Rajdeo Sharma (II) vs. State of Bihar 1999(7) SCC 604 was valid. The seven Judge Bench of this Court was of the view that the directions given by the smaller Benches decisions mentioned above were invalid as they amounted to directions of a legislative nature which only the legislature could give.

13. In the aforesaid decisions of smaller Benches (which were overruled by the seven Judge Bench decision in P. Ramachandra Rao's case) the Courts were concerned with delay in disposal of criminal cases, particularly since the right to a speedy trial had been held to be part of Article 21 of the Constitution by a seven Judge Bench decision of this Court in A.R. Antulay vs. R.S. Nayak 1988(2) SCC 602.

14. Following Antulay's case, a two Judge Bench of this Court in Common Cause vs. Union of India 1996(4) SCC 33 held that if there was delay in disposal of certain kinds of criminal cases beyond a period specified by the Court the accused must be released on bail, and in certain other kinds of cases the criminal case itself should be closed. Thus by judicial verdict the Bench fixed a limitation period in certain kinds of criminal cases.

15. Thereafter in Rajdeo Sharma (I) vs. State of Bihar 1998(7) SCC 507, a three Judge Bench of this Court directed that in certain kinds of criminal cases the trial court shall close the prosecution evidence on completion of a certain period from the date of recording the plea of the accused on the charges framed, and in certain cases if the accused has been in jail for at least half the maximum period of punishment prescribed he shall be released on bail.

16. In Rajdeo Sharma (II) vs. State of Bihar 1999(7) SCC 604 a three Judge Bench of this Court clarified certain directives in Rajdeo Sharma (I) vs. State of Bihar (supra).

17. The correctness of the aforesaid three decisions of this Court was considered by the seven Judge Constitution Bench in P. Ramachandra Rao's case (supra) and the seven Judge Bench held that these decisions were incorrect as they amounted to impermissible legislation by the judiciary (vide para 23). The seven Judge Bench was of the view that in its zeal to protect the right to speedy trial of an accused the Court cannot devise and enact bars of limitation when the legislature and statute have chosen not to do so. In paragraphs 26 and 27 of the judgment in P. Ramachandra Rao's case (supra) the seven Judge Bench of this Court has clearly held that directives of a legislative nature cannot be given by the Court, since legislation is the task of the legislature and not of the Court.

18. Before proceeding further, we would like to make it clear that we are not against all judicial activism. Judicial activism can be both legitimate as well as illegitimate. For example, when the Courts have given an expanded meaning of Articles 14 and 21 of the Constitution vide Maneka Gandhi vs. Union of India AIR 1978 SC 597, it was a case of legitimate judicial activism because the Court gave a wider meaning to Articles 14 and 21 in the light of the new developments in the country. This was a perfectly legitimate exercise of power.

19. However, as pointed out by the seven Judge Bench decision of this Court in P. Ramachandra Rao's case (supra), when Judges by judicial decisions lay down a new principle of law of the nature specifically reserved for the legislature, they legislate, and not merely declare the law (vide para 22 of the decision in P. Ramachandra Rao's case). This is an illegitimate exercise of power and many such illustrations of illegitimate exercise of judicial power have been given in Prof. S.P. Sathe's book 'Judicial Activism in India' which has been referred to with approval by the seven Judge Bench decision of this Court.

20. These are instances of judicial excessivism that fly in the face of the doctrine of separation of powers which has been broadly (though not strictly), envisaged by the Constitution vide Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr. JT 2008 (3) SC 221, Asif Hameed vs. State of Jammu & Kashmir JT 1989 (2) SC 548 etc. In other words, while expansion of the meanings of statutory or constitutional provisions by judicial interpretation is a legitimate judicial function, the making of a new law which the Courts in this country have sometimes done, is not a legitimate judicial function. The Courts of the country have sometimes clearly crossed the limits of the judicial function and have taken over functions which really belongs either to the legislature or to the executive. This is unconstitutional. If there is a law, Judges can certainly enforce it. But Judges cannot create a law by judicial verdict and seek to enforce it.

21. Moreover, it must be realized by the courts that they are not equipped with the skills, expertise or resources to discharge the functions that belong to the other co-ordinate organs of the government (the legislature and executive). Its institutional equipment is wholly inadequate for undertaking legislation or administrative functions.

22. As observed by Hon'ble Dr. Justice A.S. Anand, former Chief Justice of India :

"Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter productive and undermine the credibility of the institution. Courts cannot "create rights" where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become "judicial adventurism", the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile \026 failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties".

23. We respectfully agree with the views stated above.

24. Before proceeding further, we may state that the Motor Vehicles Act is a comprehensive enactment on the subject. If there is a lacuna or defect in the Act, it is for the legislature to correct it by a suitable amendment and not by the Court. What the petitioner really prays for in this petition is for various directions which would be legislative in nature, as they would amount to amending the Act.

25. In Union of India & Anr. vs. Deoki Nandan Aggarwal AIR 1992 SC 96 a three Judge Bench of this Court observed (vide paragraph 14): "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very

good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power".

26. This Court cannot direct legislation vide Union of India vs. Prakash P. Hinduja (2003) 6 SCC 195:AIR 2003 SC 2612 (vide SCC para 30: AIR para 29) and it cannot legislate vide Sanjay Kumar vs. State of U.P. 2004 All LJ 239, Verareddy Kumaraswamy Reddy vs. State of A.P. (2006) 2 SCC 670:JT(2006) 2 SC 361, Suresh Seth vs. Commr. Indore Municipal Corporation (2005) 13 SCC 287:AIR 2006 SC 767 (vide para 5) and Union of India vs. Deoki Nandan Aggarwal 1992 Supp(1) SCC 323:AIR 1992 SC 96.

27. The Court should not encroach into the sphere of the other organs of the State vide N.K. Prasada vs. Govt. of India (2004)6 SCC 299 : JT 2004 Supp (1) SC 326 (vide paras 27 and 28).

28. Thus in Supreme Court Employees' Welfare Assn. vs. Union India (1989) 4 SCC 187:AIR 1990 SC 334 (vide SCC p. 220, para 55) this Court observed:
"There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly the President of India cannot be directed by the court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India".

29. In Union of India vs. Assn. for Democratic Reforms (2002) 5 SCC 294 : AIR 2002 SC 2112 (vide AIR para 21) this Court observed : (SCC p. 309, para 19):

"19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules."

30. In Union of India vs. Prakash P. Hinduja (2003) 6 SCC 195:AIR 2003 SC 2612 (vide AIR para 29) this Court observed (SCC pp. 216-17, para 30):
"Under our constitutional scheme Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Assn. vs. Union of India it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority

exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in State of J & K vs. A.R. Zakki 1992 Supp (1) SCC 548 : AIR 1992 SC 1546".

31. A perusal of the prayers made in this writ petition (which have been quoted above) clearly shows that what the petitioner wants us to do is legislation by amending the law. In our opinion, this will not be a legitimate judicial function. The petitioner has prayed that we direct the Union of India to formulate a suitable Road Traffic Safety Act, but it is well settled that the Court cannot direct legislation. In fact, there is already a Road Safety Council as contemplated by Section 215 of the Motor Vehicles Act, reference of which has been made in the counter affidavit of the Central Government in which it has been stated that Central Government has constituted a National Road Safety Council which has held various meetings. It is an apex body comprising of Transport Ministers of various States and Union Territories, DG Police of various States/Union Territories, representatives of various Central Ministries and agencies apart from NGOs and experts in the field of road safety. In the deliberations of National Road Safety Council suggestions received from various quarters as also the measures being taken by the Ministry regarding road safety as also the areas of concern have been considered. In the counter affidavit, various other steps taken by the respondent no.1 regarding road safety have also been mentioned in detail. Some of the other respondents have also filed their counter affidavits mentioning the measures taken for road safety, and we have perused the same.

32. In Suresh Seth vs. Commissioner, Indore Municipal Corporation and others JT 2005 (9) 210, a three Judge Bench of this Court rejected the petitioner's prayer that appropriate amendment be made to the M.P. Municipal Corporation Act, 1956 debarring a person from holding two elected offices viz. that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. The Court observed:

"That apart this Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power or authority to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees Welfare Association vs. Union of India (JT 1989 (3) SC 188 : (1989) 4 SCC 187) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority".

33. In Bal Ram Bali & Anr. vs. Union of India JT 2007 (10) SC 509, a petition under Article 32 was filed praying for a mandamus directing for a total ban of slaughtering of cows, horses, buffaloes, etc. Rejecting this contention this Court observed:

"It is not within the domain of the Court to issue a direction for ban on slaughter of cows, buffaloes and horses as it is a matter of policy on which decision has to be taken by the Government. That apart, a complete ban on slaughter of cows, buffaloes and horses, as sought in the present petition, can only be imposed by legislation enacted by the appropriate legislature. Courts cannot

issue any direction to the Parliament or to the State legislature to enact a particular kind of law".

34. As observed by a three Judge Bench of this Court in Institute of Chartered Accountants of India vs. Price Waterhouse and Anr. 1997 (6) SCC 312(vide para 50), Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed.

35. In Madhu Kishwar & Ors. vs. State of Bihar & Ors. 1996 (5) SCC 125 (vide para 5), this Court observed that the Court is not fully equipped to cope with the details and intricacies of the legislative subject, and it can at best advise and focus attention on the State policy on a problem and shake it from its slumber, goading it to awaken, march and reach the goal. Thus, the Court can play a catalytic role with regard to the social and economic problems of the people. However, whatever the concern of the Court, it has to apply somewhere and at sometimes brakes to its self-motion, described in judicial parlance as judicial self-restraint. In particular, Courts must not legislate or perform executive functions.

36. We would also like to advert to orders by some Courts appointing committees giving these committees power to issue orders to the authorities or to the public. This is wholly unconstitutional. The power to issue a mandamus or injunction is only with the Court. The Court cannot abdicate its function by handing over its powers under the Constitution or the C.P.C. or Cr.P.C. to a person or committee appointed by it. Such 'outsourcing' of judicial functions is not only illegal and unconstitutional, it is also giving rise to adverse public comment due to the alleged despotic behaviour of these committees and some other allegations. A committee can be appointed by the Court to gather some information and/or give some suggestions to the Court on a matter pending before it, but the Court cannot arm such a committee to issue orders which only a Court can do.

37. We have gone deep into the subject of judicial activism and public interest litigation because it is often found that courts do not realize their own limits. Apart from the doctrine of separation of powers, courts must realize that there are many problems before the country which courts cannot solve, however much they may like to. It is true that the expanded scope of Articles 14 and 21 which has been created by this Court in various judicial decisions e.g. Smt. Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597, have given powerful tools in the hands of the judiciary. However, these tools must be used with great circumspection and in exceptional cases and not as a routine manner. In particular, Article 21 of the Constitution must not be misused by the Courts to justify every kind of directive, or to grant every kind of claim of the petitioner. For instance, this Court has held that the right to life under Article 21 does not mean mere animal existence, but includes the right to live with dignity vide Olga Tellis vs. Bombay Corporation AIR 1986 SC 180, D.T.C. vs. D.T.C. Mazdoor Congress Union AIR 1991 SC 101 (paras 223, 234, 259), Francis Coralie Mullin vs. Union Territory Delhi Administrator AIR 1981 SC 746. However, these decisions must be understood in a balanced way and not in an unrealistic sense. For example, there is a great deal of poverty in this country and poverty is destructive of most of the rights including the right to a dignified life. Can then the Court issue a general directive that poverty be abolished from the country because it violates Article 21 of the Constitution? Similarly, can the Court issue a directive that unemployment be abolished by giving everybody a suitable job? Can the Court stop price rise which now-a-days has become an alarming phenomenon in our country? Can the Court issue a directive that corruption be abolished from the country? Article 21 is not a 'brahmastra' for the judiciary to justify every kind of directive.

38. The concern of the petitioner is that many people die in road accident. But many people also die due to murders. Should then the Court issue a

general directive that murders be not committed in the country? And how would such a directive (even if issued) be implemented?

39. We would be very happy to issue such directives if they could really be implementable. However, the truth is that they are not implementable (for various reasons, particularly lack of financial and other resources and expertise in the matter). For instance, the directives issued by this Court regarding road safety in M.C. Mehta's case (supra) hardly seem to have had any effect because everyday we read in the newspapers or see the news on TV about Blueline buses killing or injuring people. In the Hawala case (Vineet Narain vs. Union of India AIR 1998 SC 889) a valiant effort was made by this Court to check corruption, but has it made even a dent on the rampant corruption prevailing in the country? It is well settled that futile writs should not be issued by the Court.

40. The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegation is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not, firstly because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations, or by other lawful means e.g. peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs.

41. In Ram Jawaya vs. State of Punjab AIR 1955 SC 549 (vide paragraph 12), a Constitution Bench of this Court observed:

"The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State, of functions that essentially belong to another"

(emphasis supplied)

42. Similarly, in Asif Hameed vs. State of Jammu and Kashmir, AIR 1989 SC 1899 a three Judge Bench of this Court observed (vide paragraphs 17 to 19) :

"Before adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel

of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint.

Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of Trop v. Dulles (1958) 356 US 86 observed as under :

"All power is, in Madison's phrase, "of an encroaching nature". Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self restraint\005\005\005\005\005."

(emphasis supplied)

43. The directives sought for in this petition require the expertise of administrative and technical officials, apart from financial resources. Not only should the Court not give such directives because that would violate the principle of separation of powers, but also because these are highly technical matters to be left to be dealt with by administrative and technical authorities who have experience and expertise in the matter. For instance, what should be the maximum permissible speed for vehicles in a city, where should speed breakers be fixed, when should heavy vehicles be allowed on roads, and other matters for ensuring road safety are all matters to be dealt with by the concerned authorities under the Motor Vehicles Act and other enactments, and it would be wholly inappropriate for the judiciary to meddle in such matters. Decisions on such matters by the judiciary land the administrative agencies in practical difficulties and make them bear the brunt of the decisions of the Court some of which are wholly oblivious to administrative needs and as such ill conceived.

44. Moreover, if once the Courts take upon themselves the task of issuing ukases as to how administrative agencies should function, what is there to prevent them from issuing directions as to how the State Government or Central Government should administer the State and run the country? In our opinion such an approach would not only disturb the delicate balance of powers between the three wings of the State, it would also strike at the very basis of our democratic polity which postulates that the governance of the country should be carried on by the executive enjoying the confidence of the legislature which is answerable and accountable to the people at the time of elections. Such an approach would in our opinion result in judicial oligarchy dethroning democratic supremacy.

45. In our opinion the Court should not assume such awesome responsibility even on a limited scale. The country can ill afford to be governed through court decrees. Any such attempt will not only be grossly undemocratic, it would be most hazardous as the Courts do not have the expertise or resources in this connection. The judiciary is not in a position to provide solutions to each and every problem, although human ingenuity would not be lacking to give it some kind of shape or semblance of a legal or constitutional right, e.g. by resorting to Article 21.

46. When other agencies or wings of the State overstep their constitutional limits, the aggrieved parties can always approach the courts and seek redress against such transgression. If, however, the court itself becomes guilty of such transgression, to which forum would the aggrieved

party appeal? As the ancient Romans used to say "Who will guard the Praetorian guards?" The only check on the courts is its own self restraint.

47. The worst result of judicial activism is unpredictability. Unless Judges exercise self restraint, each Judge can become a law unto himself and issue directions according to his own personal fancies, which will create chaos.

48. It must be remembered that a Judge has to dispense justice according to the law and the Constitution. He cannot ask the other branches of the State to keep within their constitutional limits if he exceeds his own.

49. As stated by A.G. Noorani in his article on 'Judicial Activism vs. Judicial Restraint' (published in SPAN magazine of April/May, 1997 edition) :

"Zeal leads judges to enter areas with whose terrain they are not familiar; to order minutiae of administration without reckoning with the consequences of their orders. Judges have made orders not only how to run prisons but also hospitals, mental homes and schools to a degree which stuns the professional. In their judgments they draw on material which is untested and controversial and which they are ill-equipped to evaluate."

50. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the Judges' preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely, former Chief Justice of the West Virginia State Supreme Court:

"I have very few illusions about my own limitations as a judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting his judgment for that of the administrator."

51. As observed by Mr. Justice Cardozo of the U.S. Supreme Court :

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "promotional necessity of order in the social life."

(see Cardozo's 'The Nature of the Judicial Process')

52. Chapter VIII of the Motor Vehicles Act, 1988 has provisions for control of traffic. These include fixing limits of speed (s.112), restriction on use of certain vehicles (s.115), power to erect traffic signs (s.116), fixing parking places (s.117), making driving regulations (s.118), duty to obey traffic signs (s.119), requirement for drivers to make such signals as are prescribed (s.121), safety measures for drivers and pillion riders on two wheelers (s.128), wearing of protective headgear (s.129), etc. These provisions are obviously meant for road safety, and if further provisions are required for this purpose the petitioner may approach the legislature or

concerned authority for this purpose, but this Court can certainly not amend the law.

53. The people must know that Courts are not the remedy for all ills in society. The problems confronting the nation are so huge that it will be creating an illusion in the minds of the people that the judiciary can solve all the problems. No doubt, the judiciary can make some suggestions/recommendations to the legislature or the executive, but these suggestions/recommendations cannot be binding on the legislature or the executive, otherwise there will be violation of the seven-Judge Bench decision of this Court in P. Ramachandra Rao's case (supra), and violation of the principle of separation of powers. The judiciary must know its limits and exercise judicial restraint vide Divisional Manager, Aravali Golf Course & Anr. vs. Chander Hass, JT 2008(3) SC 221. The people must also realize that the judiciary has its limits and cannot solve all their problems, despite its best intentions.

54. The problems facing the people of India have to be solved by the people themselves by using their creativity and by scientific thinking and not by using judicial crutches like PILs.

55. These problems (e.g. poverty, unemployment, price rise, corruption, lack of education, medical aid and housing, etc.) are so massive that they can only be solved by certain historical, political and social forces that can only be generated by the people themselves using their creativity and scientific thinking.

56. The view that the judiciary can run the government and can solve all the problems of the people is not only unconstitutional, but also it is fallacious and creates a false impression and false illusion that the judiciary is a panacea for all ills in society. Such illusions, in fact, do great harm to the people because it makes the people believe that their problems can be solved by others and not by the people themselves. It debilitates their will and makes them believe that they can solve their problems and improve their conditions not by their own struggles and creativity but by filing a PIL in Court.

57. Before concluding, we would like to refer to the decision of this Court in Dattaraj Nathuji Thaware vs. State of Maharashtra AIR 2005 SC 540 in which Hon'ble Pasayat J. expressed the view about Public Interest Litigation in the following memorable words:

"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 grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but expressing 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, detenus expecting their release from the detention orders etc. 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 busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as 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, as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system".

58. In the same decision it has also been observed that PIL is a weapon which is to be used with great care and circumspection.

59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in Dattaraj Nathuji Thaware's case (supra), public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paise income litigation'. Much of P.I.L. is really blackmail.

60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, 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.

61. With the above observations, the Writ Petition is dismissed.