PART - IV
Facets of Judicial Activism

THE PRINCIPLE OF REASONABLENESS:
AN UNENDING FIELD OF JUDICIAL ACTIVISM:

"Reasonableness" is too familiar an expression to be introduced to the Lawyers. In one form or the other, it appears in almost all branches of law and its sources, including the constitution. In the sphere of public law its silted and sporadic appearance have recently been woven onto a general principle of reasonableness by the Supreme Court. The court has assigned the principle a constitutional status. Speaking for an unanimous constitutional bench of the Court Bhagawati J. (Later C.J) the principle architect and champion of the principle, has held.

In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread, which runs through the whole of the fabric of the Constitution.

In the same opinion, he also said that every "state action whether it be of the legislature or of the executive or of an "authority" under Article 12th that does not comply with the requirement of reasonableness shall be struck down by the courtv. Thus, the principle of reasonableness requires all state action to conform to it.

As regards the executive or administrative actions nothing is very sticking or new in the principle because it has long been recognized that such actions are ultra-vires the law under which they are taken if they are found to unreasonable. The only thing new about this aspect of the principle is its elevation from the level of general law of the land evolved through judicial precedents to the level of constitutional law. Consequently, whether a law requires an administrative action to be reasonable or not the Constitution does. Moreover, the principle even those actions of the executive which do not require legislative sanction and also the actions of all those authorities which may be brought within the concept of
‘State’ for the purpose of application of the fundamental rights and directive principles⁴.

The new and the most striking as well as of far-reaching implications is the extension and application of the principle to the legislative action of the state. Beyond some feeble and scarce pronouncements that the delegated legislation, which is strict sense in an administrative and not legislative action, must conform to the requirement of reasonableness, it was never contemplated that the constitution required legislation to be tested on the touchstone of reasonableness. On the contrary, as is well known, due process designed on the lines of the V and XIV amendments of the U.S. constitution was deleted from the life, liberty and property guarantee for fear of reasonableness of laws being questioned in the courts⁶. It is equally well-known that after the commencement of the constitution attempts to bring in even procedural due process through ‘law’ or ‘established procedure’ in Article 21 or by establishing the relationship of Article 21 with Article 19 were nipped in the bud⁷. Even in respect guaranteed in that article the court clarified at the very beginning that it tests only the reasonableness of restrictions and not of law⁸. All attempts it is also well-known, to apply the test of reasonableness, particularly in the matter of compensation, to laws affecting property rights were defeated by successive constitutional amendments resulting ultimately in the deletion of that right from the category of fundamental rights⁹. How the court has then now succeeded in laying down a general principle of reasonableness with which all laws must comply? how far the court has gone in applying that principle to law? What would guide the court in determining the reasonableness of law? how far the court is justified in evolving this principle?; are some of the issues that are discussed in the following pages.

For the first time the court seems to have spoken of ‘the principle of reasonableness’ in its historical judgment in Maneka Gandhi v. Union of India¹⁰, delivered on the last day of the twenty-eight year of the constitution, i.e. on 25 Jan. 1978 to which all its roots are now traced although its foundations has been laid
more than four years before in E.P. Royappa v. State of Tamil Nadu. In Maneka, Bhagwati J. Said.

The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.

This he did on the basis of what he, along with Chandrachud and Krishna Iyer JJ. Has already said in concurring opinion in Royappa in the following words:

Equality is dynamic concept with many aspects... From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies... Where an act is arbitrary, it is implicit in that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.

While Justice Bhagwati's colleagues in Maneka concurred in his reasoning they did not rely entirely on Article 14 to establish the principle of reasonableness. Thus, Beg CJ relied on Articles 14 and 19 to judge the validity of both 'Substantive as well as procedural laws, affecting personal liberty outside Article 22. Chandrachud J. Initially read the requirement of reasonableness of procedure in Article 21 itself although he also proceeded further to hold that laws affecting personal liberty have also to satisfy Articles 14 and 19. Krishna Iyer J. also asserted that 'equality is the antithesis of arbitrariness' but he was very forthright in reading the requirement of reasonableness in the very word 'law' in Article 21. He said.

Law is reasonable law, not an enacted piece. Again.

'Law' leaves little doubt that it is normally regarded as just since law is the means and justice is the end. With minor modification in his dissent in Bachan Singh V. State of Punjab, Bhagwati J. has always stuck to his initial position that the principle of reasonableness flow from Article 14 and, as noted in the very beginning, has perfected it into an unanimous verdict of a constitutional bench of the court in Ajai Hasia v. Khalid
Mujib. It is also interesting that except in Bachan Singh, where he was lone disserter, he
did not clearly assert that his principles of reasonableness will apply to substantive laws
nor did he invalidate any legislative or executive action in any of those directions-
Royappa, Maneka, Airport Authority, Kasturi Lal and Ajay Hasia – in which he
articulated the principle and passionately argued for its application. The other judges
have, however, not adhered strictly to Bhagwati’s approach and have both delinked the
principle of reasonableness from Article 14 as well as invalidated substantive laws and
other state action on the application of that principle.

True our Constitution has no ‘due process’ clause... but, in this
branch of law, after Cooper... and Maneka Gandhi... the consequence is the
same. For what is... unreasonable and arbitrary.... Is shot down by Arts. 14 and 19
and if inflicted with procedural unfairness, falls foul of Art 21.

The Article 21 itself is the source of procedural reasonableness, he
made clear by calling that article as counterpart of the procedural due process in
the United State 22.

In the same case Desai J., speaking for himself Chandrachud CJ. and
Fazi Ali and Singhal JJ., said 23.

The word ‘Law’ in the expression ‘procedure prescribed (sic) by
law’ in Article 21 has been interpreted to mean in Maneka Gandhi’s case... that
the law must right, just and fair, and not arbitrary fanciful or oppressive.

Though he added 24

The court, however, did not invalidate any of the provision of the
Prisons, Act. 1894 challenging in the case through in order to save them from the
vice of unreasonableness it gave to them a restrictive meaning.

In Jolly George Varghese v. Bank of Cochin25, the court, through
Krishna Iyer J. surmised that some day the question of validity of S.51 and Order
21 and Rules 37 of the Civil Procedure Code, which authorize arrest and detention
of judgment-debtor on the application of the decree holder, could be questioned
under Article 21 although in the instant case the court referred back the matter to the lower court with the clarification that arrest and detention would amount and did not evade its payment by an malafide or dishonest means or intentions. On the question of reasonableness, the following observation is notable 26.

The high value of human dignity and the worth of the human person enshrined in Art.21, reads with Arts.14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence.

In Bachan Singh v. State of Punjab27, the court, by 4 to 1, upheld the validity of death penalty under S.302 of the Indian Penal Code read with S. 354 of the Criminal Procedure Code against the challenge based on Articles 14.19 and 21. For the majority, in the light of Maneka, Sarkaria J. rephrased Article 21 in the following words 28

No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.

Thus, mere fair, just and reasonable procedure is not enough under Article 21; the law must be valid otherwise also. In his dissent, expressed after more than two years, Bhagwati J. first relied on the rule of law as the basic feature of the Constitution according to which ‘the law as the basic feature of the constitution according to which ‘the law must not be arbitrary or irrational and it must satisfy the test of reason 29, Then he turned to the trinity of Articles 14,19, & 21 each of which, according to him contained the requirement of reasonableness and concluded30.

It is plain and indisputable that under our constitution law cannot be arbitrary or irrational and if it is, it would be clearly invalid, whether under Article 14 or Article 19 or Article 21 whichever be applicable.

It is here, as we have already noted, that for the first time Bhagwati J. Clearly went beyond Article 14 to establish the requirement of reasonableness and it is also here that he applied this requirement for the first time to a law, not
just procedural but substantive, and in fact reached the conclusion that S.302 of the Indian Penal Code reads with S. 345(3) of the criminal Procedure Code was “unconstitutional and void being violative of Article 14 and 21.

Then came Mishu V. State of Punjab, in which a constitutional bench, which did not include Bhagwati J., for the first time and unanimously invalidated a substantive law – S. 303 of the Indian Penal Code-which provide for the mandatory death sentence for murder committed by a life convict. The decision was based primarily on Article 21 though a reference was also made to Article 14. Quoting From Maneka, Sunil Batra and Bachan Singh, the court observed:

These decisions have expanded the scope of Article 21 in a significant way and it is now too late in the day to contend that it is for the legislature to prescribe the procedure and for the courts to follow it; that it is for the legislature to provide the punishment and for the courts to impose it... the last word on the question of justice and fairness does not rest with the legislature.

After posing the question of reasonableness of S.303 under Article 21, the court concluded:

We are of the opinion that.... It is difficult to hold that the prescription of the mandatory sentence of death answers the test of reasonableness. It Clarified:

A provision of law which deprives the court of the use of its wise and beneficent discretion in a matter of life and death, without regard to the circumstances in which the offence was committed and, therefore, without regard to the gravity of the offence, cannot but be regarded as harsh, unjust and unfair.

Relying exclusively on Article 21, Reddy J. Concurred:

So final, so irrevocable and so irresistible is the sentence of death that no law which provides for it without involvement of the Judicial mind can be said to be fair, just and reasonable.
Thus, the principle of reasonableness is delinked from Article 14 and not merely procedure but a substantive law is invalidated under Article 21.

This development was picked up, though without any reference to Mithu by Pendse J. of the Bombay High Court in Basantibai V. State37 and applied to a property legislation --- the Maharashtra Housing Area Act, 1976. The court invalidated as "unjust, unreasonable and unfair" those provisions of the Act under which for acquisition of land the owner got less compensation than that provided under the Land Acquisition Act. 198434, Different from Justice Bhagwati's observation in Maneka that 'the concept of reasonableness must be projected in the procedure contemplated by Art.21 having regard to the impact of Art.14 on the Art.21 and agreeing with Chandrachud J. in the same case that the procedure under Article 21 has to be fair, just and reasonable, not fanciful oppressive or arbitrary, Pendse J. held.

The submission.... That concept of reasonableness is legislation should not be imported in cases where Art.14 is not available ... deserves to be repelled. The legislation must be just, fair and reasonable whether protection of Arts. 14 & 19 is available or otherwise, and the submission that the legislation providing for deprivation of poverty under art.300 A of the constitution must be just, fair and reasonable deserve acceptance.

He concluded 40:

The legislation providing for deprivation of property must satisfy the requirement of being fair, just and reasonable. This case establishes at least three propositions. It clearly dissociates the principle of reasonableness from Article 14; it embodied the principle in the very notion of law; and it extends the principle beyond the sphere of personal liberty 41

The decision in Basantibai has been reversed by the Supreme Court but without disturbing the conclusion of the High Court on the question of reasonableness 42. The supreme court has rather expressly assumed, though without finally deciding, that the action of acquiring of private properties should
satisfy now Article 300 A: that 'a law should be fair and reasonable' that a law should also satisfy the principle of fairness in order to be effective; and that the said principle of fairness lies outside Art.14: This indicates that the Supreme Court does not have any obvious disagreement with the opinion of Pendse J. on the scope and application of the principle of reasonableness.

The court have extended and applied the principle of reasonableness to a Government order issued under an University Act prohibiting election contest to any body including the State legislature and Parliament; to delay in execution of death sentence, to selection of students by the state government for admission to Medical Colleges to promote National integration., to a law assigning powers and functions to the municipal authorities; to civil service rules made under Article 309 of the Constitution to service regulations, to bank regulation of public corporations and to invalidate the offence of attempt to commit suicide.

From the survey of judicial decision, it is clear that the principle of reasonableness, which originally emerged from Article 14 and 21 and initially carried the impression of controlling only procedural laws relation to deprivation of life and personal liberty, has developed into a general principle of reasonableness capable of application to any branch of law. This result has been achieved primarily through a very liberal and expansive construction of equality and liberty under Article 14 and 21 respectively and then through slow delinking of the principle from these articles.
Judicial Activism Through PIL

Judicial activism was made possible in India, thanks to PIL (Public Interest Litigation). Generally speaking before the court takes up a matter for adjudication, it must be satisfied that the person who approaches it has sufficient interest in the matter. Stated differently the test is whether the petitioner has locus standi to maintain the action? This is intended to avoid unnecessary litigation. The legal doctrine ‘Jus tertii’ implying that no one except the affected person can approach a court for a legal remedy was holding the field both in respect of private and public law adjudication’s until it was overthrown by the PIL wave.

PIL, a manifestation of judicial activism, has introduced a new dimension regarding judiciary’s involvement in public administration. The sanctity of locus standi and the procedural complexities are totally side-tracked in the causes brought before the courts through PIL. In the beginning, the application of PIL was confined only to improving the lot of the disadvantaged sections of the society who by reason of their poverty and ignorance were not in position to seek justice from the court and, therefore any member of the public was permitted to maintain an application for appropriate directions.

After the constitution (Twenty fifth Amendment) Act. 1971 by which primacy was accorded to limited extent to the Directive Principles Vis. Vis. The Fundamental Rights, the expectations of the public soared high and the demands on the courts to improve the administration by giving appropriate for ensuring compliance with statutory and constitutional prescriptions have increased. Beginning with the Ratlam Municipality case the sweep of PIL had encompassed a variety of causes.

Ensuring green belts and open spaces for maintaining ecological balance. Forbidding stone-crushing activities near residential complexes, earmarking a part of the reserved forest for Adivasis to ensure their habitual and means of livelihood; compelling the municipal authorities of the Delhi Municipal
Corporation to perform their statutory obligations for protecting the health of the community; compelling the industrial units to set up effluent treatment plants, directing installation of air-pollution controlling devices for preventing air pollution; directing closure of recalcitrant factories in order to save the community from the hazards of environment pollution and quashing of warrant of appointment for the office of Judge, High Court of Assam and Guwahati are some of the later significant cases displaying judicial activism.

A five member Bench of the Andhra Pradesh High Court in D. Satyanarayan V. N.T. Rama Rao has gone to the extent of laying down the proposition that the executive is accountable to the public through the instrumentality of the judiciary.

Consistency in adhering to earlier views despite the amendment of the law in an aspect-though not a brighter one-on judicial activism illustrative of this in the Indian context is the decision of the Supreme Court in Bela Banerjee Case in which even after the constitution (Fourth Amendment) Act. 1995 specially inducting that no law concerning acquisition of property for a public purpose shall be called in question on the ground that the compensation provided by that law is not adequate, the Supreme Court reiterated its earlier view Expressed in Subodh Gopal and Dwarkadas cases to the effect that compensation is a justiciable issue and that what is provided by way of compensation may be “a just equivalent of what the owner has been deprived of “ Golak Nath case is also an example of judicial activism in that the Supreme Court for the first time by a majority of 6 against 5, despite the earlier holding that Parliament in exercise of constitution are immutable and so beyond the reach of the amendatory process. The doctrine of “prospective overruling” a feature of the American constitution law, was invoked by the Supreme court to avoid unsettling matters which attained finality because of the earlier amendments to the constitution. The declaration of law by the Supreme Court that the future, Indian Parliament has no power to
amend any of the provision of Part III of the constitution became the subject-
matter of very animated discussion.

Kesavananda Bharati had given a quietus to the controversy as to
imutability of any of the provisions of the constitution. By a majority of seven
against six, the court held that under Article 368 of the constitution, Parliament has
undoubted power to amend any provision in the constitution but the amendatory
power does not extend to alter the basic structure or framework of the constitution.
Illustratively, it was pointed out by the Supreme court that the following among
others, are the basic features (i) Supremacy of the constitution ii) Republican and
Democratic from of Government iii) Secularism iv) Separation of power between
the legislature, the executive and the judiciary and v) Federal character of the
constitution. Supremacy and permanency of the constitution have thus been
ensured by the pronouncement of the summit court of the country with the result
that the basic features of the constitution are now beyond the reach of Parliament.

The judicial power under our constitution is vested in the Supreme
Court and the High Court which are empowered to exercise the power of judicial
review both in regard to legislative and executive actions. Judges cannot shrink
their responsibilities as adjudicators of legal and constitutional matters. How
onerous the exercise of judicial power was very aptly stated by Chief-Justice
Marshall:

"The judiciary cannot, as the legislature may, avoid a measure
because it approaches the confines of the constitution. We cannot pass it by
because it is doubtful. With whatever doubts, with whatever difficulties, a case
may be attended, we must decide it, if it be brought before us. We have no more
right to decline the exercise of jurisdiction which is given than to usurp that which
is not given. The one of the other is treason to the Constitution.

Laws enacted by the legislature must be implemented by the
executive and their interpretation is within the province of the judiciary. That is
the reason why judiciary has always been treated as the least dangerous branch and
sometimes it is also described as the weakest of the three branches with no control either on the purse or on the sword. By reason of judicial activism, much good or harm could be brought about by the judges by resorting to innovative interpretation. Decision rendered by courts generally receive public acceptance in every democracy adhering to the concept of rule of law. The criticism occasionally voiced that the judiciary does not have a popular mandate and, therefore, it cannot play a prescriptive role which is the domain of the elected law-making body sounds at first blush sensible. Even so, the prescriptive role of the judiciary sometimes receives public approbation because the role played by its sustains what the constitution mandates and averts the evils the basic document seeks to prohibit.

Interpretation of the constitution is radically different from the interpretation of an ordinary legislative provision. The constitution being the basic document incorporating the enduring values the nation cherished inevitably contains open-ended provision which afford wider scope for the judiciary in the matter of interpretation. “We must never forget” observe Chief Justice Marshall, “that it is a constitution we are expounding... intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. “In line with this thought was the view of Justice Cardozo, another great Judge.

“A constitution states or ought to state not rules for the passing hour but principles for an expanding future”
The role of the judge in interpreting law has been graphically described thus :

“Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present. Judges must reconcile liberty and authority; the whole and its parts.

Where the public opinion asserts itself against the decision of the judiciary, the question immediately surfaces as to the legitimacy of the judiciary since it lacks popular mandate. That is the reason why judiciary was cautioned by eminent legal philosophers to exercise great restraint while declaring the actions of the legislature unconstitutional. Judicial veto must not be exercised except in
cases that “leave no room for reasonable doubt”. Very eminent Judges like Holmes, Brandies and Frankfurter always adhered to the theory of reasonable doubt believing firmly that what will appear to be unconstitutional to one person may reasonably be not so to another and that the constitution unfolds a wide range of choices and the legislature therefore should not be presumed to be bound by any particular choice and whatever choice is rational, the court must uphold as constitutional. No legislature can with reasonable certainty foresee the future contingencies and necessarily every enacted law, on a closer scrutiny, will reveal gaps which the judiciary is expected to fill. This is popularly called judicial legislation. Justice Oliver Wendell Holmes, while admitting this self-evident truth observed.

I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they care confined from molar to molecular motions.

A delicate problem arises as to what constitute a rational view according to the constitution or an irrational view at variance with the constitutional prescriptions? To sustain a legislation ro to strike it down, often times, the concept of “public interest” is relined upon by the Judiciary. How slippery that doctrine of public interest is way graphically described by Justice Holmes thus:

A delicate problem arises as to what constitutes a rational view according to the Constitution or antirational view at variance with the constitutional prescription? To sustain a legislation or to strike it down, often times, the concept of “public interest” is relied upon by the judiciary. How slippery this doctrine of public interest is was graphically described by Justice Holmes thus

“(it is) a fiction intended to beatify what is disagreeable to the sufferers”.

218
And this was resorted to as part of the unwillingness of the judges “to grant power” and “to recognize it when it exists”. According to Justice Holmes, law, including constitutional law, “is crystallized public opinion”.

Subjectivity, it now unanimously accepted, must be eschewed in the judicial process. But this is easier said than done. Often times, private notations of judges take the shape of legal principles.

Judicial activism can be compared with legislative activism. The latter is of two types I) Activist law-making; and ii) dynamic law making. Activist law-making implies the legislature taking the existing ideas from the consensus prevailing in the society. Dynamic law making surface when the legislature creates an idea outside the consensus and before it is formulated, propagates it. Dynamic law-making always ordinarily carries with its legitimacy because it is the creation of the legislators who have the popular mandate. Judges cannot play such a dynamic role, no idea alien to the constitutional objectives can be metamorphosed by judicial interpretation into a binding constitutional principles.

The resultant situation may sometimes bring credit to the judicial institution and sometimes it may prove counter-productive. Examples of both categories are found even in the British constitutional law where the judiciary cannot go into the legality of legislative measure enacted by Parliament. In the Indian Context although it is not difficult to categories case under the above head, the author refrains from doing so but nonetheless he is tempted to mention one decision as a great example of judicial boldness. Independence of the judiciary is recognized as the basic feature of the constitution and when a person who was not qualified to become a High Court Judge was about to be sworn into the office, the Supreme Court intervened and permanently injected him from assuming the office and the Union of India and other constitutional functionaries not to administer oath despite the warrant of appointment issued by the President. The court also struck a note of caution that, ordinarily, appointments to the High Court Benches should not be interfered with by the judiciary but in exceptional circumstances,
interference becomes necessary. The Supreme Court had extracted the note of the Chief Justice of India who recommended an unqualified person for the office of Judge, High court, stating that he is a judicial officer and, therefore he was qualified for appointment. This decision is illustrative of how even high constitutional functionaries sometimes commit egregious mistake.

In glaring contrast to this is the case of A.D.M. v. Shvakant Shukla in which the majority of judges expressed "diamond bright" hope in the fairness of the executive in matters concerning personal liberty but later lamented for the wrong decision rendered by them. This is neither judicial restraint nor judicial boldness. Perhaps this is a rare example of judicial diffidence. The controversy is still simmering.

There is a radical difference between the traditional litigation which was essentially bipolar in which two parties are locked up in confrontation of controversy and the role of the judge was perceived to be passive. The modern litigation especially in the constitutional sphere involves judiciary in an active manner. The party who approaches the court not only asserts his right but also expect the court to lay down the norms for future guidance. The manner in which the prescriptive role is played by the court assumes great relevance. There is no justification on the part of anyone to assert that in the guise of judicial activism, the constitutional court in the country are undermining the theory of separation of power by encroaching upon the field reserved for the legislature and the executive. In the wake of the criticism, one must notice the observations made by the Supreme Court in Asif Hameed v. State of J & K.

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 function of various of various organs of State. Legislature, Executive and Judiciary have to function within their own sphere demarcated under the constitution. No organ can usurp the functions assigned to another... Judiciary has no power over sword or the purse nonetheless
it has power to ensure that the aforesaid two main organs of the state function within the constitution 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 economics justice (Emphasis added).

The line of demarcation between the three organs of the State as laid down in the aforesaid ruling of the Apex Court find clearer expression in its subsequent ruling in Supreme Court Employees “Welfare Assn. V. Union of India and Malikarjuna Rao v. State of A.P.

It is true that in adjudicating public law matters, the court takes into account the social and economic realities while considering the width and amplitude of the constitutional rights. Touching upon this aspect, the Supreme out in a recent decision, speaking through K. Ramaswamy J. in C. Ravichandra Iyer V. Justice A.M. Bhattacharjee made a very pertinent observation.

Relaxation and Expansion of Doctrine of Locus Stanadi:

For a very long time the courts in India had shown an orthodox approach interpreting rules of standing. The general rule that only the person whose fundamental right or any other legal right had been violated by the administrative action could alone move the court for the enforcement of that right, had held its way for a fairly long interval of time. In a number of cases the Supreme court had ruled that the right to be enforced must ordinarily be the personal right of the petitioner himself.36 Thus, in Roshan Kumar,37 the petitioner, an owner of a cinema, challenged the action of the administrative authority granting a certificate for construction of a cinema to another person. His plea was that the opening of a new cinema would adversely affect his commercial interests. The Supreme Court held that the petitioner had no standing to file the petition since the harm explained by him was no wrongful in the eye of law as it did not result in injury to his legal right, the business, competition being a lawful
activity. Similarly, a competitor having a rice mill was held to have no standing to challenge the shifting of another rice mill to a place in the vicinity of his rice mill because no right vested in him had been violated.38 Similarly, a person who did not apply for a post and did not fulfill the prescribed qualifications, could not challenge the validity of the rules under which the appointments were made. 39. A neighbor had no standing to challenge any illegal activity on the adjoining land unless it constitute a nuisance or affected his easement rights.40.

However, the recent years our Supreme Court had shown greater flexibility and liberality of approach in evolving rules of locus standi under Articles 32 and 226. The adoption of a relaxed view of standing his resulted in a speedier evolution of the concept of ‘Public interest litigation’. In Town Improvement Trust V. Shahjirao, 41, the court emphasized that though a petitioner under Article 226 should be one who had ordinarily a ‘Personal or individual’ right in the subject-matter in dispute, yet this was not a cast-iron rule and therefore even a person who had been prejudicially affected by an act or omission of an authority even though he had no proprietary or judiciary interest in the subject-matter could also invoke Art. 226 Jurisdiction. In another case,42, the supreme court observed that when a wrong against a community interest was done, ‘no locus standi’ would not always be a plea to prevent an individual from bringing action against the administrator. In K.R. Sheroy V. Udipi Municipality,43 the supreme court adopted a liberal view of standing. It was held that a resident of the area had the locus standi to challenge the action of the municipality in approving the construction of a cinema in a residential area.

In Ratlam Municipallity V. Vardhi Chand,44 Secton 123 of the Madhya Pradesh Municipality Act, 1961, enjoined a duty on the municipality to cleanse and keep order in public streets, place and sewers and also dispose of the night soil and rubbish. The municipal council of Ratlam failed to do this duty posing a great hazard to public health. A public-minded citizen Vardhi Chand moved the court, Krishna Iyer and Chennappa Reddy, JJ., of the Supreme Court
upheld the standing of such public-minded citizens to compel the performance of a public duty. Such cases extending the rules of standing had inculcated in the community a great awareness of legal rights and social obligations. The highest court seemed to have shattered the chains of inertia of rest and assumed an activist role in giving a new shape and direction to the law made by the legislature. This was a manifestation of maturing of our democratic institutions. In this connection, some of the recent cases deserve notice in some detail. In the Fertilizer Corporation Case,45 the question was whether the labour union of the Fertilizer Corporation, a non-statutory government corporation, had locus standi to challenge the sale of old plants by the corporation. While discussing the petition filed by the Kamgar Union on merits, the Supreme Court considered the question of standing of the Labour Union to file the petition. The court opined that if public property was dissipated or misused, the court had to be clearly convinced that representative segments of the public or at least a section of the public which was directly affected had no right to complain of the infraction of public rights and obligations. 46 The court went on to say that public enterprises were owned by the people and those who were running them were accountable to the people.47 K. Iyer took a very broad view of locus standi doctrine and made the following significant observation.48

1) If the tone of public life in the county were sufficiently honest and fair-minded, formal norms to control administration may not be needed. But when corruption permeated the entire fabric of government, legality was the first casualty.

2) A pragmatic approach to social justice compels us to interpret constitutional provisions (including Articles 32 and 226) liberally with a view to see that effective policing of the corridors of power is carried out by the court.

3) Locus standi must be liberalised to meet the challenge of times. Ubi jus ibi remedium must be enlarged to embrace all interest of public minded citizens or organizations with serious concern for conservation of public resources. Law is
social auditor and this audit function could be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation – happy and waste their time and money through false and frivolous cases. In the society where freedoms suffers from atrophy, activism is essential for participative public justice.

4) Restrictive rules of standing are antithesis to a healthy system of administrative law. Public litigation is a part of the process of participative justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps. Iyer J.'s opinion on liberalization of standing made a deep impact of judicial thinking in India. Some more recent decisions of the Supreme court carry a stamp of this progressive judicial trend. In the Additional Judges cases, 49 as many as nine writ petitions were filed in different High Court and transferred to the Supreme Court under Art.139-A of the constitution. The petitioners were all advocates. They challenged a circular letter of March 18, 1981 addressed by the Union Law Minister to the Governor of Punjab and the Chief Ministers of other states. The circular letter was highly controversial advocating transfer of judges from one High Court to another to promote national integration. The writ petitioners challenged the circular letter as violating he provisions of the constitution had also interfering with the independence of the Judiciary by executive patronage. The question before the Supreme Court was – whether the advocate petitioners had the standing to file the writ petitions. It was the unanimous finding of the court that the petitioners had the standing to file petitions. The court said that the advocates had a vital interest in the independence of the judiciary and if any unconstitutional or illegal action was taken by the State or any public authority which had the effect of impairing the independence of the judiciary, they would certainly have the standing to challenge the legality of such action.50 The advocates were an essential part of

224
the judicial system and could not be regarded as mere bystanders or meddlesome interlopers in filing the writ petitions.51 Bhagwati J. added.52.

In absence of a machinery to effectively represent the public interest generally in courts, it is necessary to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the constitution or the law, by allowing public-minded persons and organizations to move the court and act for a general or group interest, even though they may not be directly injured in their own rights. It is only by liberalising the rules of locus standi that it is possible to effective police the corridors of power and prevent violation of law.

In fact, the process of enlarging the concept of locus standi has continued unthwarted over the last few years. In Dr. Upendra Baxi v. State of U.P. 53, two law professors of Delhi University addressing a letter to the court were deemed to have the standing to complain about the inmates of the Protective Home at Agra where the inmates were living in inhuman and degrading conditions in blatant violation of Article 21 of the constitution. This was because the aggrieved inmates were themselves in such a socially and economically disadvantaged position that they could not move the court for redress.

In P. Nella Thampy Thera V. India,54, the supreme court entertained a petition at the behest of a railway commuter against the Indian Railways for improving the railway services. This is a case which clearly illustrates that a member of class of persons suffering injury by an administrative action or inaction can have standing to seek redress even if he suffers no special injury himself.

In People’s Union for democratic Rights V. India 55 popularly known as the Asiad Case, a voluntary organization formed for the purpose of protecting the democratic rights of the people was held to have a standing to file a petition under Article 32 for protecting the rights of workers employed in the construction of various projects relating to the Asiad games. The Supreme Court emphasised that it would be destructive of the rule of law if the legal rights of the
poor, ignorant and socially and educationally disadvantaged people were to remain unredressed. In labourers working on Salal Hydro Project v. J & K 57, the Supreme Court again entertained a writ petition filed by the same union complaining of infringement of several labour laws by the contractors to whom work had been entrusted by the Central Government.

In Sanjit Roy v. Rajasthan, 58 the petitioner was the director of a social action group working for the upliftment of schedule casts and schedule tribes. The supreme court held that he had the standing to file a petition to remedy the violation of the Minimum Wages Act by the State Government in connection with the wages paid to the workers.

In Bandhua Mukti Morcha V. India 59, the morcha an organisation dedicated to the release of bonded labourers in the country was conceded standing to challenge the government inaction in not implementing the Bonded Labour System (Abilition) Act, 1976.

In Mukesh Advani V. State of M.P. 60, one Mukesh Advani, an Advocate, practicing in the court addressed a letter to a court annexing thereto a cutting from the Indian Express dated Sept.14,1982, depicting the horrid plight of the bonded labour working in stone quarries at Raisen in Madhya Pradesh. As a part of social action litigation this letter was treated as a writ petition. It provides ample evidence of a strenuous effort being made by the Supreme Court to extend its umbrella of protection to the exploited, needy and unprotected workman by enlarging the ambit of locus standi.

Thus, from the above discussion we can easily conclude that the traditional principle that remedies and rights are correlative and therefore only a person whose own right is violated is entitled to seek redress does not find much favour with the present day judges. The extreme harshness of the old narrow law of standing has been diluted by the courts by giving a flexible meaning to the expression ‘aggrieved person’ and at times even allowing a stranger to move the
court. In U.S.A., the movement towards liberalisation of rules of standing has taken fast strides over the last two decades. Restrictive rules of standing were found to be inimical to a healthy system of administrative law. It was strongly felt that the rights of the individuals had to be protected and if checks had to be imposed on the administration to restrain in from wielding its powers in an arbitrary manner, the rules of standing must be extended. For a longtime U.S.A. Supreme Court had held in the view that for standing to exist, there must be the deprivation of a legal right. But later it was felt that the requirement of a legal wrong imposed an unnecessary restriction to judicial review. The purpose of standing was to ensure that the reviewing court dealt was genuine cases and to meet the requirements of this test, actual legal wrong to the plaintiff was not imperative. The same view has now been incorporated in the Federal Administrative Procedure Act. Recognition accorded to the competitor standing in U.S.A. has given a further setback to the ‘legal wrong test’. Recently, the U.S.A. Courts have given new orientation to the rule of standing by recognising the Standing of a consumer and a tax-payer. When administrative orders affected the price and quality of products meant for the consumer, the consumer was held to have the standing to seek a review of such orders. Expansion of standing is primarily designed to protect all those who have a real and not hypothetical interest in the agency action. Recently, the individuals and organizations concerned with the protection of natural, science and historic resources have been permitted to challenge harmful administrative actions. Thus, class action for securing judicial review has been recognised in numerous cases dealing with utility rates, welfare payments and environmental actions.

In India too the Supreme Court has in the recent years moved in the direction of liberalizing the rules of standing. Following developments with regard to judicial review in U.S.A., the Indian Supreme Court realised that if justice had to be made available to our millions of poor, needy and ignorant masses, then narrow pedantic concept of locus standi had to be modified. This realisation led to
the evolution of the concept of public interest litigation where a court action by a public-minded citizen to vindicate the rights of an individual or a class against administrative wrongs, was recognised. This opened up new channels for the redressal of public wrongs which had hitherto remained unremedied under the traditional rules of locus standi. Public interest litigation vindicated public interests and encouraged public participation in administrative functioning. If no one can maintain action for redress of public wrong or public injury, it would be open to the state or the public authority to act with impunity beyond the scope of its powers or in breach of a public duty owed y it.69. Therefore, our Supreme Court has held that whenever there was a public wrong caused by an act of the State or a public authority, any member of the public acting bonafide and having sufficient interest could maintain action for redressal of such wrong. 70. The concept of public interest litigation is based on the premises that with the expansion of the power of the administration in a welfare state, the corresponding power of the court must also expand. This is important to secure justice to the underprivileged, socially and economically handicapped individual and the poor. Broadening of locus standi has accelerated the development of public law and invested law with a new meaning and purpose. It has made it possible to effectively police the corridors of power and check administrative lapse. But then a number of objections have also been raised to the growing trend towards liberalisation of standing rules. How far can those objections be sustained is for this house to decide. However, the objection run on the following lines:

i) The first and oft-repeated objection to the enlargement of locus standi doctrine is that it would open the court house doors to vexatious litigants and busybodies.

ii) Broadening of standing rules is inconsistent with the traditional judicial role and will place the judicial process under server strain. Every judicial intervention centers around three concepts – ripeness, justiciability and standing. Ripeness focuses on the temporal proximity

228
of the harm; justiciability on the suitability of the subject matter for judicial resolution and standing on the nature of the interest that a person has. When the standing rule is broadened, the connection between the interest asserted and the type of judicial intervention requested becomes more attenuated.

This leads to two consequences.

a) The focus of the courts shifts from the remedying of wrongs to the making of abstract determinations of legal principles.

b) Any interest asserted becomes an excuse for engaging a court in a discussion which is at times time-consuming and fruitless.

Judicial Activism Through Post Card Litigation And Suo moto assumption of Jurisdiction:

Suo moto action may be initiated from a news-item appearing in a newspaper or a letter written to the editor of a newspaper or the like. It is not possible for the court to verify the veracity of the contents of the news-item or the letter not is it possible to know as to what was the motivation of the person who gave the news-item or wrote the letter. The argument of Prof. Buxi as advanced in “On the Shame of not being an Activist: Thoughts on Judicial Activism”, that suo moto interventions are directed to check abuse of power by the executive is rather too broadly stated. The executive bases the argument itself on the assumption that there is “Continuing abuse of Power”. This assumption, to say the least, is ante-thesis of very sound and well founded legal presumption that every public officer is presumed to act fairly and honestly unless the contrary is proved. The inherent pitfalls, therefore, of suo moto intervention have also to be taken care of and the courts have to set limits for the exercise of their powers in that field.

Another area in public interest litigation where caution and care is most required to be exercised is in treating letters from individuals addressed to
the particular judges as writ petitions or the suo moto intervention by the judges. The dangers in both these fields are inherent.

Therefore a proper procedure and methodology shall have to be evolved in this connection to secure near unanimous approach.