16.1 It is no doubt a fact that the cases of Suomoto interventions by the Judges of Supreme Court and State High Courts in the matter of treating letters and newspaper reports as Writ petitions are not rare and although they have caused alarm and apprehensions and became the subject of criticism in the past by Justices like Tulzaparkar, R.S. Pathak among others but it has now come to stay with the establishment of a separate cell for scrutiny and cognisance in appropriate cases at the Supreme Court and in several High Courts through many procedural vicissitudes. In this connection, mentionable are the guidelines noted below issued by the Hon'ble Chief Justice Bhagwati.

a) To begin with, an Assistant Registrar appointed to head the PIL Cell. He will see all the letter petitions. When the letter is by or on behalf of a person in custody or where the letter addressed on behalf of a class or group of poor or socially or economically disadvantaged persons, the directions of the Chief Justice are required to be sought for treating the letter as writ petitions.
b) Where the letter is by or on behalf of an individual (other than a person in custody) complaining of violation of his fundamental right it must be sent to the Supreme Court Legal Aid Committee after consulting the Chief Justice's principal Private Secretary.

c) Where the letter is on behalf of an individual complaining of violation of legal right (not fundamental right), the letter must be forwarded to the Secretary of the State Legal Aid and Advice Board or Committee concerned. A register of all such letters must be maintained.

d) The forwarding letter must request the Secretary of the State Legal Aid and Advice Board or Committee concerned to intimate what action has been taken in the matter. The author of the letter must also be told that his letter has been forwarded to the State Legal Aid and Advice Board or Committee and that he should contact its Secretary for further action. If no reply is received by the Supreme Court within two or three weeks, a reminder be sent to the said State Legal Board or Committee.

e) The Chief Justice will examine monthly statement of letters which are taken cognisance of as Writ petitions, letters sent to the Supreme Court Legal Aid Committee and the letters sent to the State Board.
Another innovation of the Supreme Court is the appointment of an Official who will assist the public in getting the information they want about their pending cases.

16.2 There are visible limitations suffered, difficulties encountered and inconsistencies felt in the orders issued by the Courts and in compliance therewith in those areas of public interest litigations where proper monitoring of facts, follow-up actions by the appropriate authorities and co-ordination thereof predominantly lacks to meet the purposes of such litigations as may be found in different such cases. Admittedly, there were delays in final disposal of the cases after several interim orders being passed which might not be covered by the reliefs prayed for in the petitions in the cases like Hussainara -Vs- State of Bihar 216, Khatri -Vs- State of Bihar217 (Bhagalpur Blinding Case), Bandhu Mukti Morcha -Vs- Union of India 218 Olga Tellis -Vs- Bombay Municipal Corporation219 M.C.Mehta -Vs- Union of India 220 (Sri Ram Fertilizers Gas leak case) 221 (Kanpur Municipal Corporation case), Kalahandi Starvation death case 222 Ranchi Mental Hospital223 for the matters having

216. AIR 1979 SC 1377 220. AIR 1987 SC 965
217. AIR 1981 SC 928 221. AIR 1988 SC 1115
218. AIR 1984 SC 802 222. AIR 1989 SC 677
219. AIR 1986 SC 130 223. AIR 1989 SC 798
broad impact on many persons and questions about public policy taking inactions of the Government in its executive and legislative functionaries required plugging, shaping and organising the dismal State of affairs and the Judiciary was found alone in the turmoil of disorders. In Hussainara, under trial prisoners found release on personal bond, Crime Victims were released from 'protective custody' beyond maximum period and all other reliefs due to the victims were extended but the final judgment could not be made in the absence of determination of all points raised in the dispute due to delay and lapses of the functionaries of the Government of Bihar and so also in Bhagalpur blinding case final determination of factual issues and legal liability deferred its disposal for which judiciary alone was quite helpless without having co-operation from other organs of the State. In Olga Tellis, evictions of pavement dwellers and demolition of hutments on public land in Bombay were stopped with the creation of monitoring mechanism but ultimate decision in the matter took long time. In M.C. Mehta's case (Sri Ram Fertilizer Gas Leak Case), the Court ordered closure of the plant but subsequently the situation turned otherwise on the insistence and pressure
for retaining the Plant. In Sheela Bars® -Vs- State of Maharashtra 224 the Supreme Court, while looking to individual petition against ill-treatment meted out to the women prisoners in the police lock-up, issued guidelines and/or instructions to the State of Maharashtra requiring it to work with the District Legal Aid Committees to assure that all under trial prisoners receive free legal aid and be given right to bail with information to relative or friend having further direction that only women police Officers to guard and interrogate female suspects. In that process of the orders of the Court, there are contra arguments coming over for the taking over the executive's arena by the Judiciary. Similarly, in Mukesh Advani -Vs- State of Madhya Pradesh it was found that the Court, without giving relief to the individual petitioners being bonded labourers, directed the Central Govt. to issue wage notifications for flagstone quarry workers. It was experienced by the judgment in hutment dweller's case that no effective remedy was made out on verbal promise by the State Government in making provisions for alternative shelters in respect of the hutment dwellers excepting suggestions of the Court having no 224 AIR 1983 SC 378
enforceability. The Ragging Case - State of H.P. -Vs- A Parent of a student of Medical College, Simla sets a limit to judicial authority in giving mandate to executive authority. Similarly, in U.R. Sharma's Case while the Court was holding an expansive view of Constitutional right to life upon urgency in completing the road to village but in giving justice it gave scant attention to such right taking cautious view in enforcing the right against the executive. In Bandhu Mukti Morcha, the Court was bent upon to make out "a Scheme for improving the living conditions for the workers working in stone quarries". It is also dishearteningly noted in Kalahandi Starvation death's Case that the Court ordered enquiry by the District Judge, Kalahandi on 16.1.87 to ascertain whether the State Government had in fact implemented the Social Welfare measure and whether the same was adequate to meet the needs of the people. Here the Court also asked to consider the feasibility of some suggestions made by the petitioners regarding the steps to be taken for amelioration of the condition of the people. But the reports came late and the steps taken by the State Govt. were at such time when the miseries already did their mischief and so also in Kanke Mental

225. AIR 1986 SC 847
226. AIR 1989 SC 677 - Vide Supra 210
Hospital Case - AIR 1989 SC 348 where inhuman conditions prevailed for long time without any relief by the State Government. Here also Court ordered investigation and report but the State Government did not co-operate as was expected. In all these cases, it was apparent that the problems and sufferings were mainly rooted in the inaction of the executive authorities and gaps in legislations. So, in the investigative and relief finding steps sponsored by the Judiciary the required and timely help and collaboration of the other organs of the State are of extreme importance. Absence of Governmental fund and lack of departmental initiatives are found as major constraints in fulfilling the mission to which the PIL efforts stand for.

16.3. There are cases in which taking the causes in the public interest political opportunists, communalists parochialists are coming up to Courts and disturbing the machinery of the Governments to further their interests and on the other hand there are cases that for the right causes in public interest litigations the sufferers are not getting reliefs against big business houses and influential quarters or if they at all get temporary reliefs against interim orders and directions but the
same is ultimately got fused against the inhibitions, apathies and inactions of the concerned departments of other organs of the State. More often the contentions against the creeping jurisdiction of the judiciary in the sphere of others confronts criticism and meets with absence of cooperation. Although, it is the avowed Constitutional objective that the State in other sense all organs of the State should strive for building Welfare State keeping the interest of the community above the personalised feelings and separatised organisational notions.

16.4 The public interest litigation is for vindicating the cause of justice and to ensure access to justice to those who either singly or as a class, unable to approach the court for relief by reason of poverty, helplessness or disability or socially and economically disadvantaged position and not for personal gain, or private profit or out of political motivation or other oblique consideration. Necessarily, the Courts should not allow themselves to be activated at the instance of such a person and must reject his application at the threshold. The following circumstances, inter-alia, of the cases do not justify initiation of public interest litigations;
a) All allegations about the misuse of power, favouritism, nepotism or corruption should usually be first referred to Lok Ayukta or any other appropriate authority for the purpose and not to Courts as that will carry away the valuable time of the Courts. In Jagram -Vs- Gwalior Town and Country Development Authority a discharged ex-employee of Gwalior Town and Country Development Authority challenged the appointment of the Finance Advisor of the said Authority through the garb of public interest litigation to meet his personal malice.

b) In the Supreme Court by R.S.Pathak CJ and R.N. Misra J refused to issue any directives to the Govt. as the matter had political overtones and considered that the Executive alone had final say in the matter of implementing a scheme of rehabilitation in certain areas of Arunachal Pradesh.

c) That the relief asked for or the remedies prayed must have linkage with the rights violated or in

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227. AIR 1987 Guj 11
228. (1987) 2 SCC 638
otherwise it lays stress on the question of standing - whether the same be of self along with others or as being representative one or as being a citizen for the matter of being of public significace as in the absence of these requirements, the Judges are put to strain in entertaining these cases and this disconnection of remedies without rights usually follow directions through interim orders either through the process of investigative steps asking for collaboration with the other organs of the State.

d) The major stumbling block, causing fall through in public interest litigation, arises from filing such cases without considering the justiciability and/or the constitutionality of the claims of the petitioners. Sometimes in the past in the Court of Justice, Susanta Chatterjee of Calcutta High Court, in Sunil Mondal's Case, "Gorkha Hill Council Accord" was challenged, the justiciability of the cause of the petitioner before any enactment in the matter was questioned. In the matter of Panchayet bill case before Mr. Justice K.M. Yusuf of Calcutta High Court the then Attorney
General Mr. K. Parasaran, remarked that no court had jurisdiction to interfere with the legislative functions of Parliament in a democratic Sovereign Republic when the Constitution (64th Amendment) Bill was under consideration of the Parliament and the petitioner had as such no justiciability of claim in raising the issue before the court as after the Bill, if passed by the Parliament, it would become a law and only then it could be challenged as to its validity. The Court had no jurisdiction at the time of the process of the Bill as at that time it did not affect anybody's rights. So, the contention of the Petitioners was misconceived and without justiciability and accordingly the same was liable to be dismissed at the threshold.

16.5 In 229 A.C. Datt, Petitioner Vs. Rajib Gandhi & Ors Civil Misc. Writ Petition No. 22114 of 1989 where the petitioner sought declaration that the general election which took place five years ago should be declared illegal and irregular. It was held as an ill-advised petition and liable to be dismissed. Here the Court is dismayed to find what the petitioner contended were attempts to
undermine the cultural unity of the nation. The petition preached religious and ethnic discord which was the anti-thesis of the quality of the Indian Civilisation and further it was observed that the Court was not the forum of a general criticism on aspects of Government action or inaction or its success or failure.

16.6. In S. Chidanand Pandey -Vs- State of West Bengal 230 (1987) 2 SCJ 70, 112, Khalid J. expressed fear that the Courts are becoming swamped with PIL matters and that other areas of Judicial operation were suffering and the same are now posing threat to Courts and public alike.

In most of the Courts, permanent PIL Cells have now been established to act as an initial filter for applications. The Chief Justice issues general Guidelines to the Cells which broadly categorise classes of complaints and sets down procedures for their disposal. It was suggested that the PIL might be limited to cases of "Gross Violations" where the conscience of the Courts was shocked. IN P.N.Kumar -Vs- Municipal Corporation 230. (1987) 2 SCJ 70, 112
of Delhi 231 (1987) 4 SCC 609, it was pointed out that the Supreme Court was stretched beyond capacity and thus High Court could provide the appropriate remedy. That views of the Court appeared to be inappropriate for the purpose the Judiciary was looked upon.

16.7. The dominance of the Judiciary in PIL matters sometimes face sharp criticism for its exceeding institutional capacity usurping legislative and administrative functions and for violating rule of law riding roughshod over traditional rights. Another noticeable aspect is that judges are hailing mostly from privileged classes of the Society and they are more career minded to reap the situational benefits. Political appointments, transfers, superseson etc. of the judges have seriously eroded the authority of the judges. Dworkin opines that different judges will have differing visions of political morality. Interpretations may conflict. Although, there is a best, morally principled, co-herent interpretation and the Judge may seek that interpretation; Dworkins

231. (1987) 4 SCC 609
claimed the requirement of principled actions and justifications, especially when fundamental rights are involved. On the other hand, sometimes many basic rights go suppressed and unheard by the super dominance of the executive and the Judiciary is left controlled. Ceaucescu was singularly efficient at suppressing his ethnic minorities (ask any Hungarian) and keeping the rest of his population in terror. The remedy of that position was only the civil war and execution in the Eastern European upheavals. In England, the poll tax replacing property taxes as a source of revenue to local self-Government was found much higher than originally anticipated in respect of all adults irrespective of income or value of houses and that even shook the existing Government. Accordingly, every organ of the State, nay the Judiciary, is required to feel and consider the gravity of rights of every citizen and should make best utilisation of the principle and policy in the given situation "taking rights seriously".

16.8 In Hussainara's Case, Bhagwati J (for himself and on behalf of Koshal J) observed that "Though we issued

232. 1979 SC 1360
notice to the State of Bihar two weeks ago, it is
unfortunate that on the 5th. February, 1979, no one
has appeared on behalf of the State, and we must,
therefore, at this stage proceed on the basis that the
allegations contained in the issues of the Indian
Express dt. 8th. and 9th. January, 1979, which are
incorporated in the Writ petition are correct. The
information contained in the newspaper cuttings is most
distressing and it is sufficient to stir the conscience
and disturb the equanimity of any socially motivated
lawyer or Judge. Some of the undertrial prisoners whose
names are given in the newspaper cuttings have been in
jail for as many as 5, 7 or 9 years and a few of them
even more than 10 years without trial having begun.
What faith can these lost souls have in the judicial
system which denies them a bare trial for so many years
and keep them behind bars not because they are guilty
but because they are too poor to afford bail and the
Courts have no time to try them. It is a travesty of
justice that many poor accused "little Indians" are
forced into long cellular servitude for little offences"....

16.9. In many cases including that of P.N.Thampy
Thera -Vs- Union of India 233 showing lack of funds for
improvement of the operation of the Railways and that of
"imachal Pradesh -Vs- U.R. Thama. 234 - AIR 1986 SC 847

233: AIR 1984 SC 74
234: AIR 1986 SC 847
highlighting lack of funds of the State Govt. in making usable roads for the hilly areas where roads are means of communication for living have become the constraint factors in giving relief to the petitioners in PIL litigations. In the leading cases like Rhem -Vs- Malcolm 235, it is observed that the State may have its financial constraints and its priorities in expenditure but it is pointed by the Court that 'law does not permit any Government to deprive its citizens of Constitutional rights on a plea of poverty. It is also interesting to note what justice Blackmun said in236 as "Human considerations and Constitutional requirements are not in this day to be measured by dollar considerations." In Holt -Vs- Sarver237 the Court dealt with obligation of the State to maintain a penitentiary system in America.

16.10. In Sheela Barse -Vs- India (1986)238 3 SCC 596 the Supreme Court asked the District Judges to visit the jails and to submit reports to ensure that the children were properly looked but the failure in that respect by many District Judges called for aspersion on the subordinate Judiciary and it caused concern and surprise for such non-compliance in time.

16.11. In Sachchidananda Pandey -v- State of West Bengal the petitioners, some of them were trade unionists and life members of Calcutta Zoo, opposed the bartering away of four acres of land of Calcutta Zoo to the Taj Group of Hotels. They argued that the Govt. of West Bengal have shown a lack of awareness of the problem of environment in making allotment of land for the construction of five-star hotel at the expense of zoological gardens. The Writ petition was dismissed by the single judge of Calcutta High Court on a finding of the propriety of the action taken by the State Govt. A Division Bench confirmed the decision of the single judge. In the Supreme Court O. Chinappa and Khalid Reddy J J agreed with the findings of the High Court and dismissed the appeal. It was observed that the potentials of PIL may be abused for dubious and oblique motive wasting time of the Court. It was simply to prolong the litigations for years. It decried the abuse of PIL involving enormous loss of valuable time of the High Court and Supreme Court. The Courts evoked sympathy for PIL only in cases of gross violations of rights.

239. (1987) 2 SCC 295
In order to remove the factors that are considered to be constraints in full implementation of the application of PIL, a lot of sustained efforts to be put forth by all the organs of the State through their co-operation and instant disposals to this end for ready relief to the PIL petitioners. A high-powered co-ordination committee having members from the three organs of the State is required to be formed for the Union and the State as well. The Committee will examine all such PIL matters referred to it through the PIL cell attached to the Supreme Court and each High Court. The urgency of disposal will depend upon the gravity and requirement of each such PIL matter. There should be a time limit in disposing of each case of PIL according to its length at each level requiring actions. The Judiciary, being the main spring, should make disposal in each case within time as may be prescribed by the Chief Justice of the Supreme Court and of each State. Now, to help the Judiciary in quick disposal of such cases, proper machineries be built up and activated for proper representation, investigations to check up bonafides, where necessary, either through appointment of PIL lawyers acting through public Interest Law firms to be formed for the purpose in
each State, and at the Supreme Court as generalisation of these matters with other cases stand in the way of effective implementation of the PIL matters. All these steps will gradually act as corrective and effective measures towards speed and efficiency at the grass root level of the problems where they are handled by the Executive and the Legislature. Most of the PIL cases surfaced and knocked the doors of the Judiciary only upon continued inactions and faulty programmes of these relevant areas. Bonafide Social and/or Welfare organisations should be activated to take up people's cause in these area. Above all, it is the key factor that every individual or body whether the same be judge, bureaucrat or legislator handling these PIL matters should act above self with courage and discipline for the people's cause for which our Constitution stands to secure all that good and humane. It is required that a balance should work in each decision with reason and relevance in the use of discretion whether the same by judge or bureaucrat or minister and no one should be overloaded. In this context a helpful reference may be cited . . . . . . . . . . . . . . . . . . There is a danger that the executive will react against the
courts in a way which will be designed finally to exclude the Courts from whole areas of public administration. He was saying that there is always a balance of power between the courts and the executive. This is particularly obvious in a country, like India, which has a written constitution. There is this balance.

It does move. It does change. But if one side or the other, either the executive or the Judiciary, overloads the balance in one direction and puts pressure on the other side beyond what that side regards as tolerable, then some sort of explosion generally takes place. And in the particular area of the relationship between judiciary and the executive it is better, if possible to avoid explosion *