CHAPTER V

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CHAPTER V

COURT’S ACQUISITION OF NEW ROLE - A CASE STUDY IN THE LIGHT OF INDIAN EXPERIENCE

A. INTRODUCTION

As discussed in previous chapter of this study, that Public Interest Litigation is non-adversarial litigation which is of two types, viz., Collaborative litigation and Investigative litigation, albeit this categorisation of non-adversarial litigation does not get reflected in the practice of law courts. In practice the Supreme Court does not seem to distinguish between the two. In the title of chapter IV, the present researcher has used the term 'investigative' instead of 'inquisitorial' because although this second type of non-adversarial litigation, i.e., 'investigative litigation' is analogous to 'inquisitorial litigation' - which is typical of continental jurisprudence, still in the opinion of present researcher the term 'investigative' is more closer to the spirit of court's procedure in India.

In this chapter of the study, the present researcher proposes to elucidate the "New 'Investigative Litigation' and the Indian Supreme Court" by adopting the method of case study. There will be thorough case analysis through out this chapter. Thereafter the present researcher will elaborately deal with
following aspects: The Indian position regarding enforcement of rights of 'Third parties'; How extension of writ of habeas corpus has come to check the 'violations of fundamental rights' of the poor, needy, downtrodden masses by 'public spirited persons, social organizations or groups?; What made the higher judiciary to treat even 'letters, telegrams, post cards' written to the Judges directly, or addressed to the Supreme Court or High Courts, or the Legal Aid Committee, as writ petitions?; There are certain procedural objections to treating 'letters' etc. as writ petitions, What are those objections and what are the answers to them?; In cases of gross violations human rights which are so shocking and hair rising, that Courts are forced to take action *suo motu* and also grant money compensation to the victims or their family members, as the case may be. All these aspects will be discussed by adopting case-analyst in the light of Indian Supreme Court and High Court's decisions.

B. NEW 'INVESTIGATIVE LITIGATION' AND THE HIGHER JUDICIARY

Of late, the Indian Supreme Court has deviated from the traditional adversarial litigation procedure and adopted the 'investigative procedure', wherever and whenever it felt the need and possibility, to give justice to the poor and down-trodden sections of Indian society. The judiciary at apex court has realised that, in many cases, strict adherence to adversarial
system results in injustice to the poor because they do not possess adequate economic resource, also they, being illiterate and thus ignorant of complex law and its procedure, cannot produce the relevant record before the court for the purpose of enforcing their fundamental rights. Situation is even more pitiable when a poor person like daily-wage labourer is pitted against a rich, powerful, resourceful contractor. The poor labourer cannot even approach a competent lawyer due to heavy fees. Accordingly, the Supreme Court, in many Public Interest Litigation cases, departed from the adversarial method and evolved a strategy of appointing 'commissions of inquiry' to investigate the facts and data regarding the complaint of breach of fundamental rights of weaker sections of society. Any responsible person, with good antecedents, with no personal axe to grind, may be - a District judge, a District magistrate, a Professor, a Journalist, or an Advocate - may be appointed as commissioner. By adopting the methodology of appointing the commission of inquiry for the collection of facts the Supreme Court is trying to mitigate the inability of the poor person to produce the relevant record. The court considers the report and proceeds to adjudicate upon the issues involved in the writ proceedings. However, it is in the discretion of the court to decide what weightage is to be given to the facts and data thus stated in the report of the commissioner.

The justification for deviation from adversial model is
that Article 32 of Indian Constitution, which confers wide powers on Supreme Court does not specify any procedure to be followed in issuing the 'directions, orders or writs', nor is there any compulsion to follow adversarial procedure only. The problem of the poor coming to the forefront needs different kind of 'lawyering skills and craftsmanship' along with different kind of judicial approach. Moreover, the language of Article 32(2) leaves the Supreme Court free to adopt 'any procedure' appropriate to the peculiar circumstances of the case. The same is true of High Courts exercising jurisdiction under Article 226.

1. Article 32 says, (1), "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme court shall have power to issue directions, or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the rights conferred by this Part.

2. Article 226 says, (1). Notwithstanding anything in Article 32, every High Court shall have power...to issue to any person or authority, including in appropriate cases, any Government, ...directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
In *Hira Lal v Zila Parishad*, on a complaint by Chamars that their fundamental right to trade, profession and business was being unreasonably taken away from them through the system of auctioning to the highest bidder the right in carcass utilisation. The Court asked Krishna Mahajan and Prof. Upendra Baxi to conduct a socio-legal investigation. After seven days of intensive field-work in some sampled villages in Sarasaul block in Kanpur District, Prof. Upendra Baxi and Krishan Mahajan submitted their report. They also advised alternate scheme of carcass utilization after exhaustive discussions with many eminent scientists in field concerned and developmental administration.

In *Upendra Baxi v State of U.P.*, the Court appointed a panel of physicians and psychiatrists for the inmates of Agra home. In *Khatri v State of Bihar*, an extensive investigations were ordered by the Court to ascertain the precise extent and scope of blindings by the top ranking eye specialists. In *Olga Tellis v State of Maharashtra*, Justice 0. Chinappa Reddy directed the Bombay High Court to appoint an official to hear and investigate the findings of the Municipal Commissioner that Pavement dwellers were constituting an obstruction to traffic or

4. 1981(3) SCALE 1136.
5. 1981(2) SCALE 531.
the road. The judge held that no 'demolition order' could be made without this procedure of investigation. Then in Munna v State of U.P., popularly known as Kanpur under-trial Rape case, the Court had asked the District judge, who was also an ex-officio chair-person of the Legal Air Board, to investigate and report.

In Sheela Barse v State of Maharashtra, the Court treated the letter written by Sheela Barse complaining of custodial violence against women prisoners in lock up, as writ petition and directed Dr. A.R. Desai, Director of College of Social Nirmala Niketan, Bombay, to visit the jail and interview the women prisoners lodged there and ascertain if they had been subjected to any torture or ill-treatment, and submit her report before the court.

In Bandhua Mukti Morcha v Union of India, the Supreme Court directed Dr. Patwardhan to conduct a socio-legal inquiry into the prevailing conditions in the various quarries in Faridabad, and put forward a scheme for improving the living conditions of workmen working in stone quarries, so that after hearing the parties on the scheme, the court evolves a final scheme with the assistance of State of Haryana for the purpose of economic regeneration of the workmen.

7. AIR 1982 SC 806.
In Gujarat High Court, on the basis of an article, published in the newspaper, S.M. Shukla, President, Gujarat State Consumer Protection Center, Godhra, filed Public Interest Litigation, alleging sufferings of mute villagers of Anand, in Kheda District, at the hands of the rich and powerful. He complained that workers were paid less than minimum wages, and also young girls were frequently raped by their employers. The Gujarat High Court entertained the petition and a Commission was appointed to investigate into the allegations made.

In Machhu Dam Disaster case, the facts were that on August 11, 1979, Machhu-2 Dam near Morvi collapsed and the consequential flood after the dam burst resulted in a huge loss of human life, estimated around 1800, and of course the property


11. Special Civil Application No. 1211/87.

12. This part of facts is taken from the text of the judgment delivered on June 23, 1981, by Hon'ble Chief Justice B.J. Diwan and the Hon'ble Chief N.H. Bhatt of the Gujarat High Court, released by Consumer Education and Research Center, Ahmedabad (India), Winding up Machhu Inquiry Commission Quashed, February, 1980.
also. A demand was made for an independent inquiry at the level of High Court Judge to find out the true causes and facts about the disaster, and to prevent such calamities in future as it was alleged to be man-made disaster. On August 14, 1979, the then Chief Minister, Mr. Madhavsinhsolanki, announced a probe through a Commission headed by a High Court Judge. The Consumer Education and Research Center (C.E.R.C.) was the only Public Interest Group representing the citizens before the Commission appointed to inquire into the dam disaster. This Commission was however wound up due to vested interests involved. The C.E.R.S. filed petition before Gujarat High Court challenging the winding up of Machhu Dam-2 Inquiry Commission, and requested the learned Chief Justice B.J.Diwan to order the continuance of Commission and to perform all incidental and the ancillary functions. The Hon’ble Judge observed that henceforth no delay in ‘inquiry’ should be there as C.E.R.S., which is the only public interest group, appearing before the Commission had earlier published a report criticizing the delay on the part of the government.

In **Pratul Kumar Sinha v State of Orissa**, An advocate from Nadia in West Bengal brought to the notice of the Court in the shape of a letter the new item which was published in the Calcutta edition of the Amrit Bazar Patrike containing allegation of sexual exploitation of blind girl students in a school located at Berahmpur in the District of Ganjam within Orissa State. The entertained it as writ petition and directed

13. 1989(1) SCALE 1271.
the Chief Judicial Magistrate of Berahmpur to proceed immediately
to the Red Cross Blind School and investigate into the
allegations made in the writ petition, and also to record the
statements of the inmates of the school, and then submit the
report to the Court.

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In A.S.Mittal v State of U.P., the facts of the case
were that The Lions Club, at Khurja, arranged and conducted as
part of its social service program, an 'Eye-Camp' intended to
extend facilities of expert Ophthalmic surgical services to the
residents of the town. One hundred and eight patients were
operated upon. But the whole program, however, laudable the
intentions might have been, proved a disastrous medical
misadventure for the patients because the operated-eyes were
irreversibly damaged due to a post-operative infection of the
Intra Ocular Cavities of the operated eyes. The source of the
E.Coli infection of the intra ocular cavity was the 'normal
saline' used in the yes at the time of surgery. The Public
Interest Litigation was filed before the Court by two social
activists. The Court gave directions to the Government of Uttar
Pradesh, who directed the Deputy Director (Eye Treatment) to
conduct an investigation into the happenings and submit its
report and recommendations before the Court.

In *P.N.Dubey v Union of India*, public interest litigation was filed based on newspaper reports against respondent, a former Collector and present member of Rajya Sabha. It was alleged that respondent was involved in one crore scandal and his assets were disproportionate to his known source of income. The petitioner claimed for directions to be issued for the investigation against the respondent's involvement in Palm Oil Scandal and regarding his possession of assets disproportionate to his known sources of income. The petitioner wanted the court to be a forum for investigation and perform the duties of the Lok Ayukt and Up-Lokayukt under the M.P. Lok Ayukt and Up-Lokayukt Adhiniyam, 1981. But the Court observed that it had neither the means nor the wherewithal to inquire into those allegations alleged in the petition. The allegations against the respondent were pertaining to the period when he was a public servant and a member of the I.A.S. and not after he became Member of the Rajya Sabha. The Lokayukta and Up-Lokayukt have been empowered to under the Adhiniyam to inquire into the allegations against a public servant who *i* has abused his position as such to obtain any gain or favor for himself or to any other person or to cause undue harm to any person; *ii* was actuated in the discharge of his functions as such public servant by improper or corrupt

15. AIR 1989 M.P. 225.
motives; iii. is guilty of corruption; or iv. is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member on his behalf. Court further observed that as, according to petitioner, one Anirudh Shastry has already made a complaint to the Lokayukt, nothing prevents the petitioner from filing a complaint against the respondent there.

In *Prof. Ramdas Kishoredas Amin v Union of India*, in charge of Criminal Conspiracy to murder, permission was granted by the State for C.B.I. to take over investigation after cognizance has been taken by the competent authority in State of Maharashtra. The Court issued rule-nisi and also issued further directions.

Since the Court is under a special Constitutional duty to see that poverty, deprivation and disadvantageous position does not stand in the way of the weaker sections getting justice from higher judiciary, the power to appoint a Commission or an 'Investigating Body' for making inquiries according to the directions given by the Court must be considered to be implied and inherent in the power that the Court has under Article 32 for the enforcement of fundamental rights guaranteed under the Constitution. This power is incidental or ancillary to power


17. 1989(2) SCALE 766.
which the Court is called upon to exercise in proceedings under Article 32.

Whatever is true of Article 32 is equally applicable to exercise of jurisdiction by High Courts under Article 226. In fact, jurisdiction of the High Courts is much wider because they exercise jurisdiction not only for the enforcement of fundamental rights but also for the enforcement of any other legal right. There are many rights conferred on the poor and the disadvantaged which are the creation of Statute and need to be enforced as urgently and vigorously as fundamental rights.

In order to enforce the fundamental rights and other legal rights of the poor, downtrodden, and the disadvantaged people, the Indian Supreme Court has, for the first time, given a new interpretation to Article 32, and has started treating even letters, post-cards, and telegrams addressed to a Judge or the Court itself as writ petitions, and started appointing 'Fact-Finding Commissions of Inquiry' for the purpose of determining for itself - if there is a violation of fundamental rights of weaker sections alleged in the said writ petition. In Public Interest Litigation cases, it has rejected the traditional adversarial procedure and adopted 'Investigative' or 'Inquisitorial' type of procedure for the effective enforcement of fundamental rights of the poor masses.

Prof. S.K.Agarwala observes that the question of the application or non-application of adversarial procedure under Article 32 is a vital question. He says, "It means a total
departure from the procedure which the Supreme Court was thus so far following in writ petitions." He thinks that ethos of the legal profession is geared to adversarial procedure and the Court is not equipped in terms of infrastructure to apply the non-adversarial procedure. It is humbly submitted that since there is a change in the attitude of the Court towards administration of justice to the poor, the Court is becoming sensitive to the problems of the weaker sections and delivering justice to them, casting aside all barriers to 'access', a corresponding change in procedure is also need of the time. The olden Anglo-Saxon adversarial procedure when stands in between a poor and justice system, it has to be replaced in that case by 'investigative' or 'inquisitorial' procedure wherein the Court itself makes its own inquiries or conducts, on its behalf, through appointment of Commissions, investigation of allegations made in the writ petitions. Prof. S.K. Agarwala has suggested that instead of appointing Commissions every time in a Public Interest Litigation case, a permanent, trained, with experienced persons in various fields - A Fact-Finding Machinery - should be set up under the control and supervision of the Supreme Court. It is humbly submitted that this is a very good suggestion, and should be adopted by the higher judiciary.


19. Supra note 1§, at p. 24.
Prof. S.K. Agarwala gives another reason against the appointment of Commissions by the Court. He says that the Judge while appointing the Commissioner would be inclined to appoint those whom he knows personally. Such Commissioner is likely to be, at least, as biased as the Judge himself, and bias even if for good cause, is bias all the same.

It is humbly submitted that this reasoning given by Prof. S.K. Agarwala does not appear to be potent. When there is mission before the Court to alleviate the miseries of the poor, to get justice to the poor, every and any thing that comes across must be directed towards one aim only, and that aim is to help the poor and the needy to get justice. Even if a Judge and an advocate is interested in helping the poor and to that extent is biased, how far this bias can affect the society? In a crusade against injustices of poverty, some leavage has to be given to the schemes framed for the purpose as long as they are not absolutely unjust and are not with vested motives or interests.

Prof. S.K. Agarwala, raises yet another objection. He says that the Commissions appointed are not normally trained for the job entrusted to them. It is humbly submitted that this objection does not carry much weightage because after Commissions are regularly appointed and entrusted with the job, they will gain the experience, and prove better and better.

C. RIGHT TO ENFORCE CONSTITUTIONAL RIGHTS OF 'THIRD PARTIES'

As in United States, in India also, as a general rule, a litigant may only vindicate his own Constitutional rights and immunities, and save in exceptional cases, none can claim 'locus-standi' to assert the 'Constitutional Right of third parties'. But there are examples where the courts have given 'standing' to some other person to vindicate the rights of persons who are unable to approach the court due to some legal disability or other sufficient reasons. For instance, in case of a 'minor', who has been legally wronged cannot of himself approach the court because of his disability arising from his minority. According to 21 Code of Civil Procedure, 1908, any other person acting as his next kin can bring an action on his behalf.

A preference shareholder who has been held to have 'standing' to challenge the Ordinance violating the fundamental rights of the company, whereas it is the established principle that company is separate from its constituents, i.e., shareholders, and the loss or gain of a company is not the loss or gain of the shareholder.

21.Order XXXII, Rule 1, Code of Civil Procedure, 1908 (India), provides, "Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor."

In R.C.Cooper v Union of India, an Ordinance, vesting the undertakings of fourteen commercial banks in corresponding new banks set up under the Ordinance, was challenged on the ground that the fundamental rights of the petitioner were violated. The Attorney-General contended that no fundamental rights of the petitioner were violated because the petitioner, a shareholder, was not the owner of the property of the bank. The Court observed, "The shareholder of the company, it is true is not the owner of its assets, has merely a right to participate in the profits of the company subject to the contract contained in the Articles of Association. But on that Account the petition will not fail." The Court opined that a legislative or executive measure may impair the rights of both - the company and the shareholder. "Jurisdiction of the Court to grant relief cannot be denied, when by state action, the rights of the individual shareholder are impaired, if the action impairs the rights of the company as well."

In both the cases, i.e., R.C.Cooper v Union of India and

23. AIR 1970 SC 564.
24. Which was later replaced by Banking Companies (Acquisition and Transfer of Undertakings) Act 1969.
25. Supra note 22.
26. Ibid. at p. 585.
27. Supra note 23
Dwarka Das v Sholapur Spinning Mills the shareholders were granted 'standing' because there was an injury actual or threatened to their own fundamental rights. In Sholapur Spinning Mills case, Justice Mahajan observed:

"The plaintiff and other preference shareholders are in imminent danger of sustaining direct injury as a result of the enforcement of this Ordinance."

D. VIOLATION OF FUNDAMENTAL RIGHTS.

When a person is 'unlawfully detained', a writ of 'habeas corpus' may be filed by a 'third person' who has some interest in the detenu. Even a stranger has the right to maintain the writ if he has the authority to appear on behalf of the detenu or a right to represent him. The reason for allowing a 'third person' to file a writ of 'habeas corpus' on behalf of detenu is that due to his incarceration he cannot himself approach the Court. Ex Chief Justice P.N.Bhagwati, of Indian Supreme Court says that same way when a group or class of persons cannot approach the court for vindication of their fundamental rights due to

28. Supra note 22.
29. _Tbid_, at p. 132.
30. Ex C.J. P.N.Bhagwati, Supreme Court of India, gave the above-stated views during his 'interview' taken by the present researcher on January 7, 1991.
poverty, disability or otherwise disadvantaged position, an appropriate writ petition may be filed on their behalf by a 'public spirited person' or 'social organization'. Therefore, he says, Public Interest Litigation or Social Action Litigation is an extension of the exception created in case of writ of 'habeas corpus', wherein a 'third party' is allowed to represent the detenu because he himself cannot come to the court due to his being in custody. Similar is the position of poor men who cannot come to the court due to their poverty.

In Sundrarajan v Union of India, Delhi High Court observed:

"It is well-settled that a person illegally imprisoned or detained in confinement without legal justification is entitled to apply for a writ of habeas corpus, but it is not essential that the application should proceed directly from him. Proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal confinement may also be instituted by a person other than the prisoner, who may have some interest in him."

The scope of writ of habeas corpus was broadened in Sunil Batra v Delhi Administration. The facts of the case were that

32. Ibid., at p. 36.
33. AIR 1980 SC 1579.
Sunil Batra, a convict under 'death sentence' in Tihar Jail, Delhi, brought to the notice of the Supreme Court, the crime of torture practised upon another prisoner by a Jail Warden to extract money through his relatives. It was taken as writ of habeas corpus by the court, though not strictly in traditional terms.

Thus, now the writ can be filed by a prisoner himself, or by a 'third person' not only for the release of a prisoner, but also by a co-prisoner for the enforcement of the Constitutional rights of the prisoner to which he was lawfully entitled even during confinement.

After Sunil Batra case the Supreme Court has now started admitting writs filed by 'third persons' in cases where the aggrieved persons are poor, placed in disadvantageous position, and are helpless and illiterate, and for that matter it is immaterial whether they are under-trials or prisoners undergoing punishment, bonded labourers, workers engaged in construction work, or other exploited persons. Almost all the Public Interest cases have been initiated by 'third parties'.

On the basis of a series of articles published in Indian Express, a national daily, pointing to the fact that several under-trials including children and women were rotting in jails in Bihar. A Supreme Court advocate, Mrs. Kapila Hingorani filed a writ petition on their behalf, and the same was admitted by the Supreme Court as Public Interest Litigation.

34. Hussainara Khatoon v Home Secretary, (1980) 1 SCC 81,91.
Another report in *Indian Express* narrating barbaric, inhuman and degrading living conditions of women in Agra Protective Home had made Prof. Upendra Baxi to file a writ petition before the Supreme Court for the enforcement of the Constitutional rights of the inmates under Article 21. This writ was also admitted as Public Interest Litigation and appropriate order was passed.

A similar writ was filed by another advocate Mrs. Nandita Haksar, regarding Delhi Women’s Home. A law teacher on Social Science Research Fellowship, successfully brought to completion a trial of four young tribal who grew up in a sub-jail, awaiting trial. Three journalists, Coomi Kapoor, Aswini Sarin and Arun Shourie, exposed a thriving market in which women were sold and bought as cattles, filed a writ petition demanding prohibition of this practice and immediate relief for their victims through programmes of compensation and rehabilitation.

In the same year, a legal correspondent of the *Statesman* brought to the notice of the Court the inhuman conditions of detention of ‘Naxalite’ prisoners in Madras Jail, challenging in the process the entire edifice of the Prisons’ Act, 1892.

Then, Special Legal Correspondent of the Hindustan Times brought to the notice of the Court, a report of a social activist on forced importation of seventy five young children for homosexual relations in Kanpur Jail.

In early 1982, a social worker of Gandhi Peace Foundation, assisted by Dr. Upendra Baxi, filed writ petitionns against the state of Madhya Pradesh for allowing 'bonded labour' to be paid wages of disability, that is wages in kind of 'Khesari dal' - a toxic substance causing incurable diseases among the bonded labourers. An association of Law Teachers has brought writ petition against the state of Madhya Pradesh for inhuman torture of young prisoners in Chhaterpur Jail. In ASIAD Worker's case a social organization, People's Union for Democratic Rights filed a writ petition before the Court for the enforcement of labour laws regarding ASIAD Construction work.

In Bandhua Mukti Morcha v Union of India, Bandhua Mukti

42. Association for Social Action and Legal Thought v Union of India, W.P. 8382/1981.
43. People's Union for Democratic Rights v Union of India, AIR 1982 SC 1473.
44. AIR 1984 SC 802.
Morcha, an organization dedicated to the cause of release of bonded labourers, filed a petition seeking the release of bonded labourers working under inhuman and intolerable conditions in stone quarries situated in Faridabad. In Bhagalpur Blindings case Mrs. Kapila Hingorani challenged the blindings of under-trials as violative of Article 21. In Sant Bir v State of Bihar, it was the Free Legal Aid Committee which brought to the notice of the Supreme Court, the case of Sant Bir who had been detained as 'criminal lunatic' eventhough he had become perfectly alright and fit to be discharge for a period over sixteen years. In Kamla Devi v State of Punjab, a social worker filed a petition before the Supreme Court for the release of women and children detained in the Central Jail, Ludhiana after "Blue Star". The Court directed the District Judge to personally visit and report. The report thus submitted pointed out that three mothers with children were detained without any reason. The Court ordered their release.

In Vineet Kumar v The Board of Control for Cricket in India, a Public Interest Litigation was filed against the penalties imposed on Cricket players by the Board of Control for Cricket in India.
Cricket in India (B.C.C.I.). The Court treated it as writ petition and issued notice to the respondents, also Court said that the players concerned were also permitted to enter appearance if so advised.

In *Jagat Singh v Delhi Administration*, the Public Interest Litigation was filed complaining about the manner in which Post Mortem examination are conducted in Delhi. One of the grievances raised by the petitioner was that the post mortem examinations were conducted by Junior Medical Assistants or graduates without experience. The Court observed that it was desirable that post mortem examinations should be conducted by the Medical Officers attached to the Department of Forensic Sciences in the All India Medical Sciences, New Delhi, or by persons holding equivalent positions in respect of conducting post mortem within local limits of Delhi. Court further observed that dead bodies from other States should not be brought to Delhi for Post Mortem examinations, except in accordance with or pursuant to the orders either of the Sub-Divisional Magistrate or Magistrate or in accordance with law. With these observations the Court disposed of the petition.

A Public Interest Litigation is filed by National Consumer Protection Samiti, before the Gujarat High Court, Ahmedabad.

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49. 1989 (2) SCALE 767.

alleging grievances of residents of Krishna Nagar colony against the Gujarat Housing Board. The Gujarat Housing Board was charging Rs.10/- as service charges for supply of water, drainage, street-lights, etc., in 1974. Thereafter, the Gujarat Housing Board revised this rate and fixed Rs. 31.60/-. Their contention was that how Gujarat Housing Board has now again revised the rate and is demanding Rs. 52/- per month, with the effect from 1984. This Public Interest Litigation was entertained by Gujarat High Court.

In *Vadodara Saher Grahak Mandal v The General Manager Western Railway*, a Public Interest Litigation was filed by vigilant Consumer Protection Organisation praying for direction to the respondent to assist the petitioner in collecting and analysing food samples from stalls, vendors, Railway-stalls, and canteens, and the like installations at Railway station and Railway premises of Baroda. Justice G.I.Nanavati admitting the Public Interest Litigation allowed the Consumer Organization to collect and test the samples of food sold on Railway station premises by the vendors.

In *M.D.Mishtry v Abbasbhai Haji Fida Hussein*, a Public Interest Litigation was filed by Shri M.D.Mishtry, Managing Trustee, Disha, Himmatnagar, on behalf of tribals for protecting their

51. Special Civil Application No. 7910/90, District of Baroda.

Decided on 20.11.1990.

52. Civil Revision Application No. 879/86. Petition is filed through the Secretary, The Gujarat State Legal Aid Board.
interests. It was alleged in the petition that tribals of Mithibore village, who got over Rs. 21 Lakhs of Rupees as compensation from the State, should get that amount in reality also, and prayed for stopping the traders of that village, and Godhra town from trying to take the 50% of the amount of compensation, i.e. 12.50 Lakhs of Rupees, under the pretext that they fought the case all along on behalf of tribals. Gujarat High Court entertained it as Public Interest Litigation and granted stay against the respondents, and also to the bank to not to make any payments to the respondents.

In *Vishal Jeet v Union of India*, an application was filed by an advocate complaining the sexual exploitation of children and flesh trade. He sought for the issuance of certain directions directing the Central Bureau of Investigation to:

i. institute an inquiry against those police officer under whose jurisdiction Red Light areas as well as Devadasi and Jogin traditions were flourishing, and to take necessary action against such erring police officers and law breakers;

ii. bring all inmates of Red Light areas and also those engaged in 'flesh trade' to protective homes of the respective States, and to provide them with proper medical aid, shelter, education and training in various disciplines of life; and

iii. bring the children of those prostitutes and other children

53. AIR 1990 SC 1412.
found begging in streets and also the girls pushed into 'flesh trade' to protective homes, and then to rehabilitate them.

The Supreme Court, refusing to issue any directions asked for by the petitioner, reasoned that it was neither practicable and possible, nor desirable through C.B.I. throughout the length and breadth of this country, as no useful purpose would be served by issuing such direction. Supreme Court further observed, "This malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these helpless and hapless victims, most of whom are unwilling participants and involuntary victims of compelled circumstances, and who, finding no way to escape, are weeping or wailing throughout."

In Smt. P. Bawa Chaudhary v State of Madhya Pradesh, some residents belonging to the scheduled tribes living within the Balranpur Development Blocks within the Rajpur area of the District of Sarguja in Madhya Pradesh were assigned certain Government lands for the purpose of cultivation and admittedly have been in possession of such property for quite some time. Instead of regularising their possession by issue of pattas, the Local Government Officers had started prosecuting them for trespass and had also initiated preventive proceedings under the Code of Criminal Procedure. A writ petition was, therefore, filed on behalf of named petitioners by way of representative action.

54. Supra note 53, at p. 1413.

55. 1989 (2) SCALE 1012.
and on behalf of similarly situated other members of the
scheduled tribes praying for a direction to the State to
regularise their possession by issuing pattas with heritable
rights. The Court disposed of the writ petition by directing that
the pattas shall be granted by the end of February, 1990.

In Gaurav Jain v Union of India, an advocate filed Public
Interest Litigation asking for direction to the respondents for
making provision of separate schools with vocational training
facilities and separate hostels for children of prostitutes. The
Court entertained the Public Interest Litigation, however,
observed that it is not in the interest of children of
prostitutes and of society at large that such children should be
segregated from their mothers and be allowed to mingle with
others and become part of the society. Accordingly, the court
rejected the prayer for locating separate schools and hostels for
children of the prostitutes.

From the above-stated cases it is clear that previously
only in a few cases that fundamental rights of 'third person'
could be enforced, for instance, in case of a 'minor' or 'a
person suffering from legal disability', or 'a person detained',
and also 'in case of companies' that shareholders could agitate
against the violation of fundamental rights of the company and
that too only if his own fundamental right was also injured.

But, since 1979-80, the Courts have started accepting the
petitions filed by individuals, social workers, social welfare

56. 1989 (2) SCALE 1126.
societies, social organizations, Consumer Protection Center and various other like groups agitating for the cause of helpless and hapless victims of violation of fundamental rights who cannot themselves approach the Court by reason of their poor condition, socially and economically disadvantaged position or any other disability.

The usual objection raised by the respondent that only a person whose fundamental rights are violated can approach the Supreme Court under Article 32, the Court in Bandhua Mukti Morcha case observed that plain language of Article 32(1) is clear that whenever there is a violation of fundamental right, any one can move the Supreme Court for the enforcement of such fundamental right because Clause (1) of Article 32 which confers right to move the Supreme Court does not say as to who shall have this right to move the Supreme Court. The Court said, "There is no limitation in the words of Clause (1) of Article 32 that the fundamental right which is sought to be enforced should be one belonging to the person who moves the Supreme Court."

E. TREATING 'LETTERS', 'POST CARDS', 'TELEGRAMS' AS WRIT PETITIONS

After the development of innovative strategy of Public Interest Litigation, Indian Supreme Court is trying to remove any

57. Supra note 44.
58. Ibid.
possible hinderance that can obstruct the process of reaching justice to the poor masses in India. So much so that in order to encourage the vigilant citizens to bring to the notice of the Court the socio-legal problems of the poor and downtrodden, the higher judiciary in India has been treating even the 'letters', 'post cards' and 'telegrams' addressed to the judges, the Court or the Legal Aid Committee, as writ petitions. This is, indeed, a unique development that distinguishes Indian judicial system from other judicial systems in the world.

By adopting this technique, the deprived and needy sections of Indian society are not only exempted from legal expenses but they are also absolved of the cumbersome procedure that is not understandable to a poor, illiterate person, with no idea of law and its procedure, and would be frightened to enter the court door at the very outset.

This innovative technique adopted by the Court has encouraged the citizens, who feel concerned about the cause of the poor, to write to the Court about the miseries of the poor and the higher judiciary has in fact taken steps to solve those problems through judicial process by treating the letter or the post card or even a telegram as writ petition. This innovative strategy evolved by the Supreme Court of India is in fact providing a meaningful 'access to justice' to the weaker sections of Indian humanity, that constitutes majority in India. It is a powerful tool in the hands of 'public spirited individuals', 'social action groups', and social activists for combating
exploitation and injustice, and securing for the under-privileged segments of the society, their social and economic entitlements due to them. It is a highly effective weapon in the hands of armory of law for reaching social justice to the common man.

In Bandhua Mukti Morcha v Union of India, Bandhua Mukti Morcha, an organization dedicated to the cause of release of bonded labour in the country, surveyed some of the stone quarries in Faridabad and found that a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan were working under 'inhuman and intolerable' conditions, and many of them were bonded labourers. The said organization wrote a 'letter' to the Supreme Court pointing all the facts to the notice of Supreme Court. The Court treated the 'letter' as writ petition under Article 32, and issued notices to the parties. The Supreme Court in Bandhua Mukti Morcha case justified it's treating the 'letters' as writ petition in following words:

"Where a member of the public acting bonafide moves the Court for the enforcement of fundamental rights on behalf of a person or class of persons, who on account of poverty or disability or socially or economically disadvantaged position, cannot approach the Court for relief, such member of the public may move the Court even by just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses out of his own pocket for going to

59. Supra note 44.
a lawyer and preparing a regular writ petition."

Most of the landmark Public Interest Litigation cases have been initiated by writing 'letters' to the Supreme Court, and these 'letters' were treated as writ petitions. For instance, People's Union for Democratic Rights v Union of India, was initiated by a letter of an organization for the protection of democratic rights of the people; Upendra Baxi v State of U.P. it was two law professors who wrote to Justice P.N. Bhagwati regarding the inhuman conditions of the inmates of Agra Protective Home. The letter was treated as writ petition; similarly in Olga Tellis v State of Maharashtra, Mrs. Indira Jaisingh, a journalist wrote a letter to the Court asserting the rights of pavement dwellers of Bombay city, to live on pavements so long as they do not constitute an obstruction to pedestrians and vehicular traffic on roads; in Kedra Pahadiya v State of Bihar, Dr. Vasudha Dhagamvor, a social scientist drew the attention of the Court, through a letter, to the plight of undertrials languishing in Jails for more than eight years, kept in leg irons, and forced to work outside Jail; in Sheela Barse v State of Maharashtra, Sheela Barse, a journalist, herself wrote

60. Supra note 44, at p. 814.

61. AIR 1982 SC 1473.


63. AIR 1986 SC 180.

64. (1983) 2 SCC 104.

a letter to the Supreme Court pointing to the fact of ill-treatment of women suspects in jail, and thus moved the Court for appropriate action; similarly in Ghanshyam Pardesi v State of Tamil Nadu, a letter narrating the factual story of barbaric treatment of 'naxalite detenus' ignited the Court jurisdiction.

In Veena Sethi v State of Bihar, the free legal aid committee, Hazaribag through a letter, brought to the attention of the Court the fact of illegal detention of certain prisoners.

In Katheeria Bai v Superintendent Engineer, a letter to the Supreme Court enabled a widow to get the balance of the gratuity payable to her husband. In Salal Hydro-Electric Project v State of J & K, People's Union for Democratic Rights, a social organization, wrote a letter to Justice Desai of Supreme Court about the denial of benefits of various Labour laws to workmen and also their exploitation by their contractors. In Ram Kumar Mishra v State of Bihar, Mr. Ram Kumar, President of Legal Aid Committee, Bhagalpur, through a letter apprised the Supreme Court about the violation of Minimum Wages Act of workmen operating the ferries.

Then in Neerja Chaudhary v State of M.P., a journalist, who was a Civil Rights correspondent for the newspaper Statesman,
wrote a letter to a Judge of Supreme Court regarding non-
rehabilitation of bonded-laboureress released from Faridabad stone
quarries by the order of the Supreme Court. The Court treated the
letter as writ petition and directed the Government of Madhya
Pradesh to take effective steps for their rehabilitation. 72

Then in Lakshmi Kant Pande v Union of India, an
advocate of the Supreme Court complained through a letter
regarding the mal-practices indulged in by social organizations
engaged in offering Indian children in adoption to foreign
parents. Again, in Janki v Sardar Nagar Municipality, a Public
Interest writ petition was initiated by a letter to the Chief
Justice of Gujarat High Court complaining of absence of an
underground drainage in Charanagar area of Sardarnagar
municipality. The Court entertained the letter as writ petition
and directed the municipality to immediately make arrangements
for drainage system in view of impending monsoons. 73

In Pratul Kumar Sinha v State of Orissa, an advocate
wrote a letter to the Supreme Court, based on a news item published in
Calcutta edition of the Amrit Bazar Patrika, the fact of sexual
exploitation of blind girl students in a school located at
Berahmpur, in Orissa. The Court entertained the letter as writ
petition and directed CJM to make and inquiry and issued notice

72. (1984) 2 SCC 244.
73. AIR 1986 Gujarat 49.
74. 1989 (1) SCALE 1271.
to Union of India.

In a Matter of Complaint Received From Delhi Judicial Service Association, Tis Hazari Court, Delhi, a 'Telegram' was received by the Court from Delhi Judicial Service Association, Tis Hazari Court, Delhi, drawing the attention of the Court to certain incidents which have taken place at Nadiad, State of Gujarat, in which a Chief Judicial Magistrate was alleged to have been arrested by the Police, and dragged by the Police after hand-cuffing and tying his hands and legs, and that as a consequence of the said incident all the judges of the subordinate judiciary in Gujarat had gone on strike, and the Courts had ceased to function. The Court treating the 'telegram' as writ petition, reasoned that it was a matter which required immediate attention of Supreme Court in order to safeguard the independence of judiciary. The Court also issued emergent notices to the State of Gujarat, to the Director General of Police, Gujarat, to the Registrar of the Gujarat High Court, and to the Delhi Judicial Service Association, and asked the members of the judiciary to resume the work to avoid inconvenience to the general public since the Court had taken cognizance of the said matter.

It is not only Supreme Court, but High Courts have also not lagged behind in treating 'letters' as writ petition if and when the 'letter' alleged violation of fundamental rights of the poor and disadvantaged sections of society. A farmer, whose

75. 1989 (2) SCALE 654.
agricultural land came under Armian Dam constructed by irrigation department of the Rajasthan State, not only wrote innumerable letters to the government and went number of times to the offices, but also went on hunger strike, but all in vain. Then, he wrote a letter to Rajasthan High Court regarding twenty-two years of his struggle. Justice Ghuman Mal Lodha, treated the letter as writ petition and issued notices to the Government. The Judge also requested the Free Legal Aid Board to cooperate in the matter.

F. PROCEDURAL OBJECTIONS TO TREATING 'LETTERS' ETC. AS WRIT PETITIONS

There has been general procedural objection that the 'letters' addressed to the Court by a party cannot be treated as writ petition for the enforcement of fundamental rights under Article 32 of the Constitution of India. To this objection, the Supreme Court, in Bandhua Mukti Morcha case replied that since Article 32(1) confers the right to move the Supreme Court for the enforcement of fundamental rights by 'any appropriate proceedings', there is no limitation in regard to the kind of proceedings envisaged in Clause (1) of Article 32, except that the proceeding must be 'appropriate'. And the 'appropriateness'

of the proceedings has to be judged in the light of the purpose for which the proceeding is to be started, namely, the enforcement of fundamental right. Thus, by giving such activist interpretation, the Court has sledged the traditionalists objections to efforts for providing cheap informal and expeditious justice to the poor.

So much so that not even the Supreme Court Rules can limit the jurisdiction of Supreme Court in granting 'relief' for the violation of fundamental rights. Accordingly, the Supreme Court may not only treat 'letters' as writ petitions but may also ignore any prescribed procedure, and treat 'any communication' or any suo-motu knowledge as writ petition, as was done by Justice M.P. Thakkar of Gujarat High Court.

In Bandhua Mukti Morcha case, Justice A. Sen, very rightly observed that though normally the procedure prescribed in the Court Rules was desirable to be followed while entertaining a writ petition under Article 32 of the Constitution, but in exceptional cases where 'general public interest' was involved, the Court might exercise its jurisdiction under Article 32 of the Constitution for the enforcement of fundamental rights treating the 'letter' or the 'communication in any other form' as 'appropriate proceeding' under Article 32(1) of the Constitution.

77. Infra note 86.
78. Supra note 44.
The above-stated view is nothing but an affirmation of what Supreme Court observed in *S.P. Gupta v Union of India*:

"It must not be forgotten that procedure is but a hand maiden of justice and cause of justice can never be allowed to be thwarted by any procedural technicalities. This court would, therefore, unhesi-tantly and without any qualm of conscience cast aside the technical rules of procedure in the exercise of it's dispensing power and treat the letter of public minded individual as writ petition and act upon it."

Accordingly, despite all the objections against the 'treating of letters as writ petitions', the law is well-established, firmly settled that where the weaker sections of the community are concerned, living in poverty and destitution, living in miserable conditions, helpless victims of an exploitative society, not having 'access' to justice system, the Supreme Court in such cases would not insist on a regular writ petition to be filed on their behalf by 'public spirited person' espousing their cause and seeking 'relief' for them through the Court of law. Thus, Court would readily respond to a 'letter' addressed by such 'public minded person' acting *pro bono publico* with no personal axe to grind.

In *Veena Sethi v State of Bihar*, the Supreme

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79. AIR 1982 SC 149.
81. AIR 1983 SC 339.
Court has cast aside the doubts raised by critics with regard to treating 'letters as writ petitions'. The Court observed as follows:

"The criticism is based on a highly elitist approach and proceeds from a blind obsession with the rites and rituals sanctified by an out-moded Anglo-saxon jurisprudence. The most complete refutation of this criticism is provided by the action taken by Court in this case. It was a letter from Hazaribagh legal committee to one of us (Justice P.N.Bhagwati) which set the judicial process in motion but for this letter which drew the attention of the Court to atrociously illegal detention of certain prisoners in the Hazaribagh jail for almost two to three decades without any justification whatsoever, these forgotten specimen of humanity, languishing in jail for years behind stone walls and iron bars, deprived of freedom and liberty which are inalienable rights of human beings, would have continued to remain in jail without any hope of ever walking out of its forbidding environment and breathing the fresh air of freedom."

The above-stated paragraph reflects the spirit with which the Court has been entertaining letters for judicial redress, and treating them as writ petitions. Even the High Courts of India

82. Supra note 81.
are also adopting the same sympathetic, pro-active, goal-oriented practice.

Justice P.N. Bhagwati, in *Himachal Pradesh v A Parent of a Student of Medical College, Simle*, however, clarified the position in this regard. He said that it is not that every letter which may be treated as a writ petition by the Supreme Court and the High Courts. He added, it is only where the letter is addressed by the aggrieved party, or by a public spirited individual or a social action group for the vindication of Constitutional or the legal rights of persons in custody, or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redressal that the Supreme Court or the High Court would be justified, and will be bound to treat the letter as a writ petition. There may be cases where even a letter addressed for the redressal of wrong done to 'an individual' may be treated as a writ petition, where the Supreme Court or the High Court considers it expedient to do so in the interest of justice. In *Mukesh Advani v State of M.P.*, the Court accepted a newspaper clipping, narrating a story about 'bonded labour', as the basis for a Public Interest Litigation petition. Thus several judges have been known to initiate and Public Interest Litigation in the interest of justice.

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83. 1985 (1) SCALE 758.

84. AIR 1985 SC 1368.
G. COURT TAKING ACTION 'SUO MOTU'

The pioneer of this unique development is Justice M.P. Thakkar, of Gujarat High Court. In an attempt to deliver justice to the poor, when Justice M.P. Thakkar read a letter to the Editor appeared in the *The Times of India*, that a destitute widow of backward community, whose husband, an employee of Gujarat Refinery had died of cancer, more than two years back, was not paid the provident fund of her husband, he directed the office to treat the letter as special leave application. He also directed that the office will issue the notice as a notice by the Court, calling upon the Regional Provident Fund Commissioner to show cause - why an appropriate writ or order should not be issued directing him to pay the provident fund with interest, etc.

Accordingly, not only the 'letters' of 'public spirited persons', journalists, social activists, professors, legal aid committees, or other social organizations committed to the cause of the poor and downtrodden, ignites the Court's jurisdiction to take action, but also the conscience of the Court, touched by the misery of the poor when any judge reads some such report or article in the newspaper or any letter to editor. In the above-stated case the particular letter was not even addressed to the Court, but was simply written to the editor of newspaper, but the

85. Presently, Judge, Supreme Court of India.
The contents of the letter were such that conveyed to the judge the fact of injustice being done to poor widow, Justice M.P. Thakkar did not wait for any formal petition to be filed, and treated the letter to editor as a petition.

This demonstrates a welcome trend wherein the judges, instead of sitting in ivory towers of neutrality and indifference, have come down and out to deliver to the poor masses the 'access to justice' which is due to them, by keeping aside the strict, cumbersome, complex procedures that scare the common men, and encourages the exploiters to misuse it against the helpless and hapless.

Justice M.R. Sharma of Punjab and Haryana High Court has also set a similar example when he suo motu reduced the sentence awarded to several Bihar labourers, travelling without tickets and were sentenced by Railway Magistrate on the spot to Jail to work as bonded labourers. In this case, Justice P.N. Bhagwati, the Chairman of the Committee for implementing Legal Aid Scheme, took the initiative and the case was constituted to come before the High Court.

Prof. S.K. Agrawala, has pointed out certain dangers in judge's taking actions suo motu. He says, a judge cannot

87. Court of Its' Motion v The State of Punjab, decision dated December 20, 1982.
find out the motivation and intention of a person writing a letter to the editor. Nor does the judge have the 'means' to verify the contents of the letter before he commences the proceedings on its basis. He adds that—acting on the basis of such letters may encourage certain persons with all sorts of ulterior motives to write the letters. And also the practical difficulty is that, since all letters to the editor/s cannot be taken up by the Court, so in selecting some of them, the approach of the judge may be arbitrary and emotional, and not rational. He apprehends that if *suo motu* intervention of a judge is permitted on the basis of a letter to the editor, he could intervene on any other basis also, for instance, a news item in any communication media, a report by a friend, somebody knocking at the door of a judge with his sympathetic tale to tell, or a judge coming across some injustice in his daily life, and the like. The real apprehension of Prof. S.K. Agrawala lies in that there could in fact be no limits whatsoever if this idea were given a logical extension, except, perhaps the 'judges' own sense of 'right and wrong'. Prof. S.K. Agrawala feels that it would have a tendency to convert 'justice according to law' into 'justice according to judge's discretion'.

It is humbly submitted that these apprehensions of Prof. S.K. Agrawala are not fair as it casts doubts on the sense of discretion of the Judges, and also it goes against the interest of poor masses who have, after centuries some hope that something may done now in the wake of judiciary being activised and
sensitised to their causes. In this context it is appropriate to point to Prof. Agrawala that in Bandhua Mukti Morcha case, Slal Project Labourer's case and many other cases, the court has in fact appointed Commissions in order to verify the contents of the letters received by them. Here the only difference is that the letters were written to Editors and not to the judges directly. The question is then - how can one be sure that a letter written to the Judge directly would not be colored by ulterior motives. If letters written to the Judges, to the Court, to the Legal Aid Committee have been accepted to be treated as writ petitions, what is the harm in treating a letter to the Editor of a Newspaper, or even a news report or article depicting some facts pointing to grievances of poor masses, as writ petition? Infact, it will give to the poor more and more protection, and will keep the executive more and more alert.

Even certain judges of the Supreme Court have expressed their reservations about the practice of treating letters as writ petitions. In Bandhua Mukti Morcha case, Justice Pathak saw a great danger inherent in the practice of entertaining a mere letter as a petition from a person whose antecedents and status are not known or are so uncertain that no sense of responsibility can be attributed to the communication. Justice Pathak suggested that in order to avoid any kind of miscalculation, a document be

89. Supra note, 44.
set in form or be accompanied by evidence showing that the allegations made in it are cautiously verified and the person making the allegations has acted with responsibility. He said that it was very essential because a plaint, petition or application commences the course of litigation involving expenditure of public time and public money. He felt that a document making allegations without proof could constitute the abuse of process of law against which the court must ever be vigilant.

Justice Pathak justified the 'waiver' of the 'rule of verification' only in two exceptional circumstances, viz.,

i. When habeas corpus jurisdiction of the Court is involved, because in all cases of illegal detention, the Court must act speedily and readily; and

ii. When the authorship of communication is so impeccable and unquestionable that authenticity of its contents may prima facie be accepted until rebutted.

It is humbly submitted that albeit the apprehensions of Justice Pathak are surely logical, yet the pre-conditions imposed by Justice Pathak can restrict the 'public spirited men' who may due them desist from bringing to the notice of the Supreme Court the miseries of poor people. It is humbly suggested that the Court can make its own arrangements for verification of facts. This can be achieved through Legal Aid Committees within those areas where such violation of rights is pointed by the letter. If

91. Supra note 44.
the procedure is again made cumbersome, as suggested by Justice Pathak, then the very object of Public Interest Litigation will be frustrated and the poor will again be deprived of the 'access' opportunities which are now, owing to salutary efforts at various levels, are ultimately provided by the Supreme Court and High Courts, by treating the letters as writ petitions.

In *Sudip Mazumdar v State of M.P.*, where a journalist wrote a letter to the Supreme Court along with five of his investigative reports pointing to the fact of deaths in the Army firing range in Madhya Pradesh. A preliminary question was raised — whether the 'letter' could be treated as a writ petition? The Division Bench of the Supreme Court referred the case to the Constitution Bench for giving guidelines on the following issues:

1. Should this Court (Supreme Court) take notice of such letters addressed by individuals by post enclosing some paper cuttings and take action on them *suo motu* except where the complaint refers to deprivation of liberty of any individuals?

2. Should such letters be sent to Supreme Court Legal Aid Society by the Registrar with a request to examine whether there is any prima-facie case which requires to be considered by the Supreme Court, and if it felt that there is such a case, to file a formal petition against appropriate parties after collecting necessary materials?

3. Can a stranger to a cause, be he a journalist, a social worker, an advocate or an association of such persons, initiate action before this Court in matters alleged to be involving Public Interest or should a petitioner have some interest in common with others whose rights are infringed by some governmental action or inaction in order to establish his locus-standi to make such a complaint?

4(a). Can the Supreme Court take action on such letters though there is no prima-facie case of infringement of any fundamental right?

4(b). Even in cases where fundamental right is stated to have been infringed, can this Court take action on such letters where there is no allegation that the person concerned is in illegal custody?

5. Can this Court take action on such letters in matters for which remedy can be had in ordinary civil, criminal or revenue courts or other officers on the ground that a number of people are affected? To be precise, if the complaint contains an allegation of encroachment of lands of one group or tribe by another group or tribe, can this Court direct the District Magistrate or District Judge to inquire into the matter and to make a report to this Court? Or should the parties be given necessary legal aid and be referred to a local court having jurisdiction over the matter?

6. Can this Court take action on letters addressed to it when the facts disclosed are not sufficient to take action?
Should these letters be treated differently from other regular petitions filed in this Court in this regard, and should the District Magistrate or the District Judge be asked to inquire whether there is any case for further action?

7. If after investigation, it is found that by such a letter a baseless complaint had been made, should not then costs be imposed on the person who had written it? Can he be treated differently from others?

8. Should a petitioner who has an interest in common with others, whose rights are alleged to have been infringed be exempted from paying court fee and from all other relevant rules of the Supreme Court, when he writes a letter to the Supreme Court complaining about such infringement? Should all the relevant rules be suspended when a complaint is made through a letter?

9. If this Court can take action on such letters in such informal way, why should not the High Courts and other courts, authorities and officers in India also act in the same way.

10. Would such informality not lead to a greater identification of the court with the cause than it would be when a case involving same type of cause is filed in the normal way?

It is humbly submitted that in Sudip Mazumdar case, the Division Bench has raised unnecessary doubts. Indian
Constitution is based on the basic policy of 'Protective Discrimination' in favour of the poor, downtrodden and helpless people. One should closely look at the queries raised by Division Bench from the angle of equalizing the poor with the rich before the courts and providing equal justice to the poor, one would get a mandate from one's conscience that - Do everything to help the poor; break every procedural barriers to deliver justice to the poor.

Of course, there is no harm in referring any matter to the Supreme Court Legal Aid Committee which may, in turn, refer the same to the High Court Legal Aid Committee and District Court Committee for verification of the facts, but there should be no obstruction - whether social or economic, or procedural technicalities - in between poor and helpless citizens and 'equal access to effective justice' for them in a case wherein they are pitted against rich, exploitative, powerful party. Raising of such doubts by the Division Bench is a retrograde step in the progressive step taken earlier by the apex judiciary.

In the beginning of this progressive era of entertaining letters as writ petitions, some of the judges were popularly known to be the protagonists of Public Interest Movement and therefore, complainants directly wrote letters to them which judges would place before their own court after converting them into writ petitions. Such type of practice earned the criticism that petitioner were shopping for their judges, and judges in turn were shopping for particular causes, and choosing their
litigants. This practice was even criticised by Justice Tulzapurkar in a public lecture delivered at Poona on October 29, 1982. He said that such a practice, if continued, would result in conferring the privileges on the complainant to have a judge or forum of his own choice, which would be subversive of judicial process which enjoins that no litigant can choose his own forum. He further added that it will also result in erosion of administrative powers of Chief Justice.

In *Bandhua Mukti Morcha* case, Justice Pathak also criticised the practice of writing letter to individual judges. He observed:

"No such communication or petition can properly be addressed to a particular judge. Which judge or judges will hear the case, is exclusively a matter concerning the internal regulation of the business of the Court, interference with which by a litigant or member of public constitutes the grossest impropriety....It is only right and proper that this should be known clearly to the lay public....They also embarrass the judge to whom they are personally addressed."

Albeit, the general public was encouraged to write to individual, particular judges about whom they were sure that they


94. Supra note 44.
being totally committed to the cause of the poor and weaker sections would entertain their letters, and thus convert them into writ petitions, still this practice of the apex judiciary initiated criticisms concerning impartiality of certain Judges. It is humbly submitted that if the letter were addressed to the Chief Justice directly, or when letters were addressed to individual judges they should have, instead of placing before their own Court, marked the same to the Chief Justice, or if the Court had laid down some rules and regulations with regard to the procedure as to how those letters were to be dealt with, then it would have remained undoubted practice, acceptable from all corners.

In the same vein, Justice Amrendra Sen, in Bandhua Mukti Morhca case, said that it was eminently desirable that any party addressing a letter or any other form of communication to Supreme Court seeking its intervention on the basis of said letter or communication, whatever it might be, should address that letter or communication to the Supreme Court, and not to individual judges by their name.

H. GRANTING OF 'MONEY COMPENSATION' FOR VIOLATION OF FUNDAMENTAL RIGHTS

The Supreme Court has innovated yet another right, i.e., 'right to receive compensation for damages caused due to

95. Supra note 44, at p. 848.
administrative lapses. This right was for the first time recognized in *Rudul Shah v. State of Bihar*, wherein a person was acquitted by the Court but was not released by the Jail authorities for fourteen long years of his precious life. The Supreme Court felt shocked by the sordid and disturbing state of affairs disclosed by the writ petition for *habeas corpus* filed by the petitioner for the release of a person from the unlawful detention who was already acquitted by the Court for more than fourteen years ago. Accordingly, the petitioner also asked for 'compensation' for illegal incarceration in which the detenu had lost his precious fourteen years of life behind the bars even though he was acquitted by the Court. And when the petition was presented before the Supreme Court, the Attorney General of Bihar informed the Supreme Court that the petitioner had already been released about a month back. The fact was that, the session court acquitted the petitioner on June 3, 1968, but the Jail authorities released him on October 16, 1982. So, even though the 'relief' sought for in the petition had become infructuous, the Supreme Court asked the Government of Bihar to submit written explanation as to why petitioner had been detained in Jail for fourteen long years after his acquittal by the Court. Jail authorities gave unsatisfactory explanation that the petitioner had been 'insane', while they could produce no record to show on what basis he was adjudged 'insane' or any specific measures which

96. AIR 1983 SC 1086.
might have been taken to cure him of that affliction, and whether it took fourteen long years to cure him of the said 'insanity'.

The Supreme Court was faced with the problem of rectifying the grave injustice perpetrated upon the petitioner. If a 'money claim' was raised, it could have been raised and decided upon a suit filed on that behalf in a court of lowest grade competent to try it. So the issue before the Supreme Court was - Whether in the exercise of its jurisdiction under Article 32, it could pass an order for the payment of money if such an order was in the nature of compensation consequential upon the deprivation of fundamental right? Since, in this case, the unlawful detention of the petitioner after his acquittal for fourteen long years was so shocking and unjustified that the Court felt that the petitioner was entitled to be compensated for his illegal detention, and in such circumstances if the Court refused to pass an order of compensation in favour of the petitioner, it will be doing merely lip service to his fundamental right to liberty, which was so grossly violated by the State Government. The Supreme Court observed:

"Article 21, which guarantees the 'right to life and personal liberty' will be denuded of it's significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right reasonably be prevented and due compliance with mandate of Article 21 secured, is to mulct
it's violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other methods open to judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as shield.

Ultimately, the Supreme Court granted money compensation amounting to Rs. 35,000/- to the petitioner, and also a right to file a regular suit in the ordinary courts to recover damages from the State and its erring officials for taking away his precious fourteen years of independent life which could never come back.

Rudul Shah holding was indeed a unique one, a bold departure from the existing legal position, but was much called for and a welcome decision.

Dr. S.N. Jain said that one should never forget that such alarming situations as this case was, call for new strategies and methods to solve them. Had the Court not taken such a position as was called for in this case of clear, demonstrably gross violation of petitioner’s fundamental right to personal liberty for fourteen long years, and allowed the legal technicalities to

97. Supra note 96, at p. 1089.

98. The then Director of Indian Law institute, New Delhi.
stand in the way, it would have amounted to surrendering to governmental lawlessness, showing cold indifference to the personal liberty of the individual and his immense sufferings, certainly not contemplated by fathers of the Constitution.

Then, Deoki Nandan Prasad v State of Bihar, is another example of governmental lawlessness, instituted against State of Bihar. The facts of the case were that the petitioner was a retired person but his pension was withheld by the Government of Bihar. In 1971, the Supreme Court issued a writ of mandamus to the Government of Bihar for the release of his pension. After the mandamus was issued, the petitioner approached the administrative authorities, including the Chief Minister for implementing and giving effect to the writ of mandamus, but the writ was not implemented for twelve long years, and during this whole period the said writ issued by Supreme Court was treated as a piece of paper. The petitioner, naturally, was forced to petition before the Supreme Court for a writ of mandamus to execute the 'mandamus' already issued against the Government about twelve years back. This case demonstrate the mockery of 'justice to the needy' and 'cold indifference of a Government', known for it's Bhagalpur blindings, languishing in Jails - the under-trials, illegal detentions, etc. Under these circumstance, the Supreme


100. AIR 1983 SC 1134.
Court passed the order for the payment of abhoringly delayed pension by a fixed date with interest. The Court also awarded to the petitioner exemplary costs amounting to Rs. 25,000/- as the officers of the State had harassed him, which in view of the Court was deliberate, intentional and motivated.

This trend of granting money compensation which started with Rudul Shah case and Deoki Nandan is a welcome, much awaited development calling the Government to pay for its inaction and maladministration due to which a poor person is deprived of his most precious of the fundamental rights – the right to personal liberty, and when he has to run from one office to other in governmental department for enforcement of his right, he looses his peace of mind and patience, for which he must be compensated for.

In Oraon v State of Bihar, the Supreme Court, through Justice P.N. Bhagwati and Justice S. Mukherjea, awarded Rs.15,000/- as compensation to an under-trial prisoner who had been detained in lunatic asylum unnecessarily for six years and was later found to be fit to be discharged.

In R. Gandhi v Union of India, two Secretaries of the Indian Association of Lawyers and two law students, who were interested in the welfare of the community instituted Public

101. Supra note 96.
102. Supra note 100.
103. Referred by Dr. S.B. Jain in his Article, Supra note 99.
104. AIR 1989 Madras 205.
Interest Litigation seeking redress for the trials and tribulations undergone by the minority Sikh Community of Coimbatore in Tamil Nadu and a few others, in the wake of assassination of Srimati Indira Gandhi on 31st October, 1984. The facts of the case were that as an aftermath of dastardly assassination of Srimati Indira Gandhi, there were unfortunate incidents in the country affecting the Sikh Community in particular, and a series of incidents took place in Coimbatore. Court held that victims were entitled to reasonable compensation, and thus directed the State Government to pay compensation to the victims strictly as assessed and recommended by the collector amounting to Rs.33,19,033/- as assessed and recommended by the Collector. The Court had also set a time limit of eight weeks from the date of the order, within which payments must be made.

In A.S. Mittal v State of U.P., the Lions Club at Khurja, with a laudable objective and intentions, arranged and conducted ‘Eye-Camp’ to offer surgical services with a team of Doctors. The whole programme proved a disastrous medical adventure for the patients because of irreversible damage caused to the operated eyes owing to a post-operative infection of Intra Ocular Cavities. The said infection was caused by the used of ‘normal saline’ which is put in the eye at the time of surgery.

Public Interest Litigation under Article 32 was brought by two social activists, Shri A.S. Mittal and Shri Om Prakash Tapas,

105. Supra note 14.
acting on behalf of an organization - 'Union for Welfare and Human Rights'. The Court said that on humanitarian considerations, the victims should be afforded some monitory relief by the State Government. Accordingly, the Court directed that in addition to the sum of Rs.5,000/- already paid by way of interim relief, the State Government shall pay a further sum of Rs.12,500/- to each of the victims.

In SAHELI. A Woman's Resources Centre, Through Ms. Nalini Bhanot v The Commissioner of Police, Delhi, Public Interest Litigation was filed by the Women's Civil Rights Organization − SAHELI − on behalf of two women Maya Devi and Kamlesh Kumari. The facts of the case were that Kamlesh Kumari, with her husband Mr. Inder Singh had three children, of which Naresh, a 9 year old boy, was the second child. There was a long standing dispute between them and their landlord who wanted them to vacate the tenanted room. On November 14, 1987, the S.H.O. of Anand Parbat Police Station, Lal Singh, accompanied with Sham Lal, Sub-Inspector in uniform, entered their house and started beating Kamlesh Kumari, tore her clothes, molested her, and when her nine year old son, Naresh clung to his mother to protect her, Lal Singh started beating Naresh also. Kamlesh Kumari was dragged away to police station on a criminal charge, and when she was released from Tihar Jail on November 16, 1987, she came back and found that her child Naresh was in very bad condition, and other children had taken shelter in neighbour's house. Naresh was admitted

106. 1989 (2) SCALE 1315.
to Ram Manohar Lohia Hospital, but he died in the hospital. Even medical legal case was entered by the Police with lot of difficulty. The Court held that Naresh was done to death on account of beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The Court directed the Delhi Administration to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh, a sum of Rs.75,000/- within a period of four weeks from the date of judgement.

In Punjab Istri Sabha v Shri Surjiit Singh Barnala
Punjab Istri Sabha filed Public Interest Litigation through it's President and Secretary praying for a writ of mandamus and/or any other appropriate directions to the respondents to suitably enhance the quantum of compensation being paid to the families of victims of terrorist attacks in Punjab; to frame a uniform criteria for the grant of financial assistance to the next of kin of those killed by terrorists and also to award adequate assistance to those injured in such attacks resulting in temporary or permanent disability; to produce the record of number of such families who have been rendered such financial assistance and the quantum of assistance given in each case by the respondents so far; and for the grant of such other relief which may be considered fit and proper in the circumstances of the case. The Court issued mandamus to the respondents to enhance the amount of uniform ex-gratia grant from Rs.20,000/- to Rs.50,000/- as recommended by its Officers Committee. The Court also

directed the State Government of Punjab to provide employment to an educated male member of the terrorist victim's family unmindful of the fact whether the victim was before his death in Government employment or not.

It is to be noted that while granting money compensation to the individual victims for the violation of their fundamental rights by the governmental authorities, the Court has not gone into the question of sovereign or non-sovereign function of the government. The seeming trend is towards the protection of individual liberty. The detention in Jails is a sovereign function. And when, any government officer acting under sovereign duty acts in a negligent manner and detains a person beyond a period of his lawfully prescribed detention, as per decision in Kasturi Lal v State of U.P., the State is not liable to compensate. But in Rudul Shah's case the Supreme Court has not even touched the question of sovereignty or non-sovereignty of--

108. AIR 1965 SC 1039
109. The 'Sovereign' and 'Non-sovereign' functions of the State, and the difference between the two was first explained in P & O Navigation Steam Co. v Secretary of State, (1861) 5 Bombay High Court Report APP. Then after independence, it was taken up in State of Rajasthan v Vidyawati, AIR 1962 SC 933; Kasturi Lal v State of U.P., AIR 1965 SC 1039; Sham Sunder v Union of India, AIR 1974 SC 890.
functions. In Rudul Shah's case the Court has straight away granted money compensation for the loss of years in unlawful detention. In A.S. Mittal's case the Court granted money-compensation on 'humanitarian grounds'. However, in SAHELI v The Commissioner of Police case the Court did say that since the child was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency, money compensation must be granted.

In Municipal Board v Hira Lal, the High Court of Rajasthan was intrigued into action by a letter sent on April 29, 1987 by Justice M.P. Thakkar of the Supreme Court to the Chief Justice of High Court enclosing therein a representation by Hira Lal of Rajkot complaining delay in the disposal of the appeal which was pending before the High Court since 1979. The said appeal was filed by Hira Lal against an award of compensation given in the context of the death of his son and daughter-in-law in a motor boat accident in 1973, i.e., fourteen years back, when both had died in the said motor boat accident caused by the sinking of the motor boat in a lake managed and controlled by the Municipal Board, Mount Abu. They had gone to Mount Abu on their honeymoon. The accident had occurred due to gross negligence of the municipal board in putting a boat which had no fitness certificate as per boating rules. The Chief

110. AIR 1988 Raj. 7.
Minister of Rajasthan had sanctioned ex gratia grant of Rs. 500/- to each of the family of the deceased as a token of deep sympathy to the bereaved family. On hearing from Justice M.P. Thakkar, the Chief Justice of the High Court directed that the case be heard immediately. The critical question before the Court was - Whether it could act suo motu, even though the complainant had not filed an appeal for the increase in the amount of compensation? The Court had no hesitation in holding that in the present era of judicial activism the Court must not only act suo motu but also provide relief to the complainant. Chief Justice G.M. Lodha observed:

"[I]n this age where the letters and post cards on which no court-fee is paid and no formality of a suit or writ petition are fulfilled, are entertained, then the present case cannot be worse than that, because even now we can impose condition of court-fees realization from the claim which is being allowed and the State interest to that extent can be safeguarded."

Accordingly, the Court acting suo motu enhanced the compensation of the accident to Rs. 25,000/-. And the grant of Rs. 500/- by the Chief Minister as ex gratia payment was decried by the Court as demonstrating serious degradation of human values. The Court also ordered the Municipal Board, Mount Abu, to pay the amount awarded by the Court with in three months, failing to do so the claimant will further be entitled to 12% rate of

111. Supra note 110, at p. 12.
interest starting from the date of filing the suit till the realization of the amount.

In Thressia v K.S.E.B a widow wrote a letter to one of the judges of the High Court alleging that no action had been taken by the authorities in providing her any monetary relief for the loss sustained by her due to the death of her husband which was cause by the negligence of the electricity board. The letter was treated as writ petition under Article 226. Justice Varghese found that the complaint of the widow was based on inexcusable indifference and negligence of the electricity board in leaving a snapped wire line unattended and unguarded. The act of cold indifference had taken the precious life of the only wage earner of the widow's family. The petitioner had invoked Public Interest Litigation jurisdiction of the Court after a long waiting for seven years for 'relief' for the loss that she had suffered. The Board was, therefore, ordered to pay compensation to the petitioner and her children even though the suit for the same might have been barred by limitation. Justice Varghese, thus granted money-compensation amounting to Rs. 72,000/- to the widow as her husband had been electrocuted seven years back due to the sheer negligence of State Electricity Board.

In Jaram Singh v State of Himachal Pradesh, the petitioner had addressed a letter to one of the judges complaining that his wife had died while returning home in the

112. AIR 1988 Ker. 206.
evening, when she was hit by a stone which had rolled down from the upperside of the road where labourers engaged by the Public Works Department were carrying out construction work of another road. He also wrote that now after the death of his wife, due to the said accident, he had to look after his two minor children and for that he was compelled to give up his job with a private firm. The Court ordered the State of Himachal Pradesh to pay to the petitioner a sum of Rs. 30,000/- as compensation. Chief Justice P.D. Desai and Justice R.S. Thakur, held that in the exercise of its writ jurisdiction, a High Court is empowered to award 'interim damages' in cases of gross violation of 'right to life and personal liberty' guaranteed by Article 21 of the Constitution. If on the facts and circumstances of the case, and on the basis of material on record, the judicial conscience was satisfied, that if a suit were to be filed to recover damages, then such interim compensation could be awarded, and a decree would follow almost as a matter of course.

In Ram Pyari v Union of India, a prestigious daily newspaper of Rajasthan, Patrika, carried a story in September, 1985, entitling "Sainik ki Patni Chalis Sal Se Pension Ke Liye Bhatak Rahi Hai". The said story could catch the attention of the judges of High Court. Felt shocked to learn that a widow of a Hawaldar of Azad Hind Fouz who had sacrificed his life in 1944 for the motherland had been denied pension for the last 40 years. The new

114. AIR 1988 Raj. 12
paper item was treated as writ petition. Chief Justice G.M. Lodha of Rajasthan High Court used the technique of *suo motu* Public Interest Litigation jurisdiction in providing relief to the widow of ex-serviceman who has laid down his life for freedom struggle under the leadership of Netajee Subhash Chandra Bose. Chief Justice G.M. Lodha, feeling shocked at the heart touching, hair raising and conscience shocking story of poor widow observed:

"It is a pity that a widow had to fight for more than 40 years and even though the national press carried the story after story of her plight, yet the Govt. on some technical ground or the other or due to red tapism did not allow any relief."

Accordingly, the Court held that widow of freedom fighter was entitled to all concessions and benefits which were given to such a person's family, and directed - the government to pay to the widow all the arrears of pension within one month from the date of the order; other arrears and benefits be paid to her within six months and thereafter regular payments be made at her village; and since more than forty years had passed and the widow was above 80, in anticipation of the final settlement, a sum of Rs.25,000/- each be paid to her by the Central Government and the State Government within a period of two months failing which she would be further entitled to interest at the rate of 12% from September 1985; and also all medical facilities be provided to her at her village.

115. *Supra note* 114, at p. 126.
In *Sebastian M. Hongray v Union of India* the Supreme Court by a writ of habeas corpus required the Government of India to produce two persons. The Government failed to produce them alleging that they had disappeared in mysterious circumstances. The Court rejecting the argument of Government held the government and other respondents guilty of Civil Contempt for their wilful disobedience to the writ. However, the Supreme Court did not stop at this, but keeping in mind the torture, the agony and the mental oppression through which the wives of those two persons directed to be produced, had to pass, rather than imposing fine, directed the Government of India to pay Rs. One Lakh to each of the women as example costs. This is another example wherein the Government had to compensate with money, for it's lapses as regards the liberties of it's citizens.

Thus, 'granting money compensation' for violation of one's fundamental rights is a laudable step. Albeit, the precious years lost to the aggrieved person can not be returned, the Government must be made to realise it's culpability, negligent mistake, and the victim or his family members, as the case may be, must be paid some money compensation.

In *Kasturi Lal case*, Justice Gajendra Gadkar, even though he said that if only he was in a position to help, but he was entangled in the web of sovereign and non-sovereign functions, thereby lost sight of the real grievance of the individual. But,
later, in *Rudul Shah* case, the Judge had a feeling and sensitivity for the sufferings of the victim and he also took steps to grant money compensation in order to teach the Government that in future it should be careful not to deprive any person of his liberty or detain anyone wrongfully.

However, Prof. S.K. Agrawala has raised few questions on the bold step taken on the part of the Court in granting money compensation to the victims of violation of their fundamental rights due to Governmental lawlessness, negligence or inaction, in such cases as *Rudul Shah* and *Deokinandan*. He says:

1. Should violation of all the fundamental rights earn compensation or only the exceptional cases of gross violations of some fundamental rights under Articles 21 and 22?

2. Will it be financially viable for the State to pay compensation even in case of gross violation of fundamental rights, e.g., illegal detentions of thousands of undertrial prisoners and others, all over the country, custodial violence in Jails, police lock-ups, women's and children's homes and the like?

3. Would the determination of compensation not oppressively 117 add to the workload of the Court?

It is humbly submitted that Prof. S.K. Agrawala's quarries over such a healthy and welcome developing trend is are unnecessary. After finally analysing the above-stated cases till 117. *Supra note* 88, at pp. 42-43.
this date, is it not in the interest of common man that government machinery is now expected to be more vigilant and more responsible towards the violation of fundamental rights of a citizen? After all, guaranteeing fundamental rights, basic to a human being, cannot be compromised with the Government's financial inability to pay. The basic human rights of poor masses cannot be allowed to be violated by negligent, sleeping, inactive, and irresponsible executive machinery. Government must pay for the gross negligence and irresponsible behaviour of it's officers and men if they violate fundamental rights of poor, innocent citizenry.

When one looks into the reasons for the violation of fundamental rights in Bhagalpur blindings, long unlawful detentions, custodial violence exceeding the limits of authority conferred on officials, flouting of labour laws, refusal to identify and refusal to release bonded labour, one will witness nothing but the negligence, bias, or callousness on the part of some of the individual officers. Therefore, it is humbly submitted that along with the State, the individual functionary responsible for gross violation of fundamental rights should also be made to contribute to the money compensation to the victims.

It is humbly submitted that law should develop new principles of 'individual official responsibility' also for their administrative wrongs. Should any official act in good faith, then he deserves to be protected. But such pleas of good faith should not encourage and induce administrative irresponsibility
and callousness, and should not enable him to escape personal liability even if he is grossly negligent or biased. Here, judicial wisdom can check this aspect.

It is humbly submitted that if it is felt that it is not possible to pay money compensation for violation of every fundamental right, then at least violations of rights falling under Articles 20, 21 and 22 must be compensated for. One does not have to worry about shouldering an oppressive burden upon the courts if they start paying compensation in cases of violation of fundamental rights, as Prof. S.K. Agrawala apprehends, because payment of compensation will surely have deterrent effects on the violators, and will have fruitful result for future as it will make the government and its officers more responsible and resulting in lesser cases of violation of fundamental rights of people, and so there will be lesser cases before the Courts. Thus, the practice of payment of money compunction would not oppressively increase, on the contrary it would decrease the work-load on the courts.

Accordingly, the practice adopted by the court to pay money compensation, would act as protector of the rights of the human beings with a powerful sanction to compel the violator to compensate the victim. This sanction will serve as a deterrent in deterring the violator not to violate basic human rights often, and be responsible and careful guardian of fundamental rights of citizens.
In Bhim Singh, M.L.A. v State of J & K the Supreme Court has awarded a compensation of Rs.50,000/- to Bhim Singh who was illegally detained by the State. Even though, Bhim Singh had been released even before the petition was decided, the Supreme Court thought it proper to compensate him for his illegal detention. The bench, in this case, constituted of Justices R.D.Pathak and O.Chinnappa Reddy. Relying on Rudul Shah and M.Hongray they observed:

"When a person comes to us with a complaint that he has been arrested and imprisoned with malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasions may not be washed away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation."

On plight of human liberties of ordinary citizen, the Court observed:

"If personal liberty of a member of the legislative assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals."

118. 1985 (2) SCALE 117.
119. AIR 1983 SC 1086.
120. Supra note 116.
121. Supra note 118.
122. Ibid.
And on Police officers and executive magistrates, who had been harassing the petitioner on the directions of the government, the Court critically observed that the Police officers, custodians of law and order, should have the greatest respect for the personal liberty of the citizens, and should not flout the laws by resorting to such bizarre acts of lawlessness. The Court further emphasized, "Custodians of law and order should not become depredators of civil liberties, their duty is to protect and not to abduct."

Prof. Upendra Baxi raised a question as to - How do we compensate young persons kept for long years in pre-trial detention for their enforced loss of childhood and all deprivations of sociability? How do we compensate the blinded under-trials or the ones who have been inhumanely tortured? What does a Court do, under fundamental rights jurisdiction, when it finds young persons thrown in jail for no other reason than facilitating homo-sexual assaults? Or when it finds that inmates of protective home for women are first allowed to go insane and in the wake of the Court's acquisition are put out on roads? Or where the woman who was bought and sold vanishes from Delhi even before the hearing of writ petition has to fully commence? What -

123. Supra note 118.

relief may the Court provide in situations of extra-judicial executions? He asks, can the money compensate for loss of youth, sanity or mental torture?

It is no doubt understandable, and now settled that unless some principles are evolved to fix the liability of the State for the gross violations of fundamental rights of the masses, the whole purpose of Public Interest Litigation will be frustrated.

I. CONCLUDING OBSERVATIONS

Public Interest Litigation, despite criticisms from all chores, has come to stay firmly in India. This new revolutionary, innovative concept fixes a new role for the judges, advocates, law students, law teachers, social activists, social organization, people, press, social reformers and journalists. Legal profession needs re-organization in the wake of this new development. The Court, in their turn, will have to collect socio-economic data to understand various Public Interest problems that come before them or which they come across in the society, and judges will now have to take an activist role, in total contrast with the accepted Common Law model of a mere 'umpire'. The government lawyers and law officers will also have to shun --

the adversary role and adopt, instead, a cooperative role when in a case governmental lapses and failures of duty are alleged in Public Interest Litigation. Both, the government and the media, are required to have a open-minded, supportive attitude towards Public Interest Litigation in order to make the whole programme a successful venture in achieving it’s goal of delivering 'equal access to effective justice' to the poor masses.

In final analysis, it is humbly submitted, that Public Interest Litigation is not simply an extension of the scope of 'locus standi', but it has given birth to newer rights of the human beings which were never heard of before, and also seeks to implement them. 'The acquisition of New Investigative Role by the Higher Judiciary, 'Right to enforce Constitutional Rights of Third Parties', 'entertaining Public Interest Litigation on violation of Fundamental Rights', 'treating of letters, and other forms of communications, as writ petitions', 'Court taking action suo motu in cases of shockingn hair rising violations of Fundamental Rights', 'Granting Money Compensation for the violation of Fundamental Rights', are all new developments that have given to the Indian Judiciary a pride of place. With these developments in the background, the poor of this country have, at the back, the protection of higher judiciary.

The legal profession, social reformist organizations, and individuals acting pro bono publico have all come out to help the poor and the hapless.

But the fact can not be ignored that with this development
of Public Interest Litigation the courts now have higher responsibility. The people have come to identify the Courts as a last resort for the oppressed. Court now has to maintain its credibility. The Courts are now through Public Interest Litigation forcing the pace of socio-economic changes, and are compelling the governments - both at the Centre and State levels - and also the bureaucrats to perform their Constitutional duty as Constitution intends them to protect poor against social and economic injustices, and ensuring the realisation of basic human rights. Through judicial craftmanship, the Courts are evolving newer rights as part of basic human rights for the benefit of poor. Public Interest Litigation is indeed proving most powerful weapon for the protection of weak and oppressed against violations of their basic human rights.