CHAPTER VI

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CHAPTER VI

PUBLIC INTEREST LITIGATION ACTIVISM ENTERING NEW ARENAS

A. INTRODUCTION

In this chapter of the present study, case analysis would show that Public Interest Litigation is fastly entering into 'new arenas'. It is arousing high expectations not only for the vindication of governmental commitments to the welfare of needy, downtrodden people, but also for effectuating social control, maintaining public harmony, preserving rule of law, preventing decline of morality, etc.

In the landmark decision of Maneka Gandhi v Union of India Indian Supreme Court ruled that 'procedure' prescribed by law for depriving a person of his life or liberty cannot be any procedure but procedure must be 'just, fair and reasonable' procedure. On this touchstone of Maneka ruling, i.e., 'procedural fairness', the Court has tested virtually all aspects of prison administration, and has declared 'newer rights' of convicted and under-trials. In this chapter of the study, firstly, there will be a discussion on these new rights recognized by the apex Court in the background of new liberal interpretation of Article 21, as

1. AIR 1978 SC 597.
'Right to Legal Aid', 'Prison Justice', 'Bar fetters', 'Hand cuffing', 'Right to Speedy Trial', 'Right of Prisoner to get Wages', 'Right to Means of Livelihood', 'Right to live with Human Dignity', 'women and children'.

In the field of Labour Law also, Judiciary has through it's activist role ensured the enforcement of labour laws by the Government and it's contractors responsible to follow the law. Through case-study, a critical analysis of the same will be done. Thereafter, an attempt will be made to demonstrate how judiciary has activised itself to protect the humanity against the adverse effects of environmental pollution.

The activist role of the judiciary has also come to the rescue of mentally sick persons. Besides, there are number of cases wherein Public Interest Litigation Activism has helped — those living in 'slums' and pavements; those dying of starvation and selling even their children out of hunger and poverty, i.e. 'food petitions', resulting in the recognition of the right for basic needs of human being; 'accidentally injured' to get medical aid immediately; in the area of 'reservations'; recognizing the doctrine of 'equal pay for equal work', etc. Public Interest Litigation Activism has also checked public accountability of the political executive. It has also started guiding 'communication media', i.e., Television. Supreme Court has lately ruled that should any Public Interest Litigation petitioner
indulge in criticism of the court during the pendency of the proceedings to which he/she is a party, the court can start contempt proceedings against him/her. The Court cannot permit withdrawal of Public Interest petition at a later stage. All these new arenas wherein Public Interest Litigation has been filed will be discussed in detail with reference to case-law. Thereafter, the chapter will be concluded with final observations.

B. AMPLIFYING THE SCOPE OF RIGHT TO 'LIFE' AND 'PERSONAL LIBERTY'

In India, the higher judiciary is reaching the poor, downtrodden, helpless, hapless, disappointed under-trials and convicts to enforce their rights and freedoms when taken away by preventive detention or punitive action. By amplifying the scope of Article 21 of Constitution of India, the Judiciary is making fundamental rights as meaningful entitlements for the detenus and convicts. While doing taking this liberal stand the judiciary gives the reasoning that when a convict is punished for one or the other crime, he is not denuded of 'all' the rights which are fundamental to his very existence. The Court have declared that right to live with human dignity is a fundamental right of every individual including persons charged with crime, and accordingly handcuffing of the accused and putting bar fetters, unless
of course when essential for safe custody of the prisoner, is violative of Article 21. The Courts have recognized that even a prisoner condemned to death has a right not to be put in solitary confinement because solitary confinement deprives such prisoner of other rights available to other prisoners, and thus adds to his punishment leading to violation of Article 20(2) of Constitution of India.

Article 21 provides that no person shall be deprived of his life or personal liberty except according to "procedure established by law." The most crucial words in this provision are "procedure established by law" because these words are interpreted by the apex court in such liberal manner that Article 21 is given "highly activist magnitude" and is characterized as "procedural magna carta" protective of "life" and "liberty." It has brought in "procedural fairness" in relation to personal liberty, and has deeply influenced the administration of "criminal justice" and "prison administration" for the benefit and protection of basic human rights of prisoners whether under-trials or convicted. The higher judiciary, in India, is reaching the poor, helpless, and disappointed under-trials and convicts to enforce their rights and freedoms taken away by either preventive detention or punitive action.

In Munn v People of Illinois, it was pointed out that by "life" something more is meant than mere animal existence. The inhibition against "life" extends to all those limbs and

2. (1877) 94 US 113.
faculties by which life is enjoyed. The provision equally prohibits mutililation of the body by the amputation of arm or leg or putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world.

Indian Supreme Court also, in Kharak Singh v State of U.P., endorsed the same view taken in Munn v State of Illinois by the United States Supreme Court and said that Article 21 means not merely the right to the continuance of person's animal existence, but it also means a right to the possession of his organs - his arms, legs, etc.

In Kharak Singh's case, petitioner was being kept under continuous surveillance by police as per police law. Justice Ayyanger observed that 'personal liberty' in Article 21 was a compendious term including within itself all the varieties of rights which go to make up the personal liberty of man, other than those dealt with in Article 19(1), and that while Article 19(1) deals with particular species or attributes of that freedom, personal liberty in Article 21 takes in and comprises the 'residue'

3. AIR 1963 SC 1295.
4. Ibid.
In United States Constitution the expression 'liberty' occurring in 5th and 14th Amendments has been given very wide interpretation. It takes in all the freedoms, and is not confined to mere freedom from bodily restraint, but extends to the full range of conduct which the individual is free to pursue. The 5th Amendment to United States Constitution lays down that no person shall be deprived of his liberty or property without 'due process of law'. In United States, this clause has been the most important, single source of judicial review. The judiciary has interpreted the words 'due' as meaning 'just', 'proper' or 'reasonable. Therefore, the Courts can judge the validity of a law affecting life, liberty or property of a person as being 'reasonable or not'. And if a law does not accord with it's notions of what is 'just and fair' in the given circumstances of the case, the Court may declare that law as invalid. The term 'Due Process' has two aspects, viz., 'substantive due process' and the 'procedural due process'. 'Substantive due process' envisages that the substantive provisions of a law should be reasonable, and not arbitrary. 'Procedural due process' envisages a reasonable procedure, i.e., the person affected should have 'fair right of hearing' which includes four elements, viz., 'notice', 'opportunity to be heard', 'an impartial tribunal', and an 'orderly procedure'. The Courts, under 'Due process' become the arbiter of reasonableness of both substantive as well as procedural provisions in a law.

In 'Due process concept', the word 'due' is of variable content
and denotes that law should be 'just', and what is 'just and reasonable' is not a static or rigid concept, it varies from one situation to another, and what may be regarded as reasonable in one situation may not necessarily be so in another situation.

In A.K. Gopalan v State of Madras, it was argued before the Supreme Court that the expression 'procedure established by law' in Article 21 was synonymous with the American 'Procedural Due Process', and therefore, the reasonableness of any law affecting a person's life or personal liberty should be justiciable in order to assess whether the person affected was given a right of fair hearing. The Court, however, rejected the argument giving several reasons. Firstly, Court said, the word 'Due' was a significant omission in Article 21 because the entire efficacy of the 'Procedural Due Process Concept' emanated from the word 'Due'. Secondly, the Draft Constitution had contained the words 'Due Process of Law' but these words were later dropped, and instead the present expression was adopted. This strongly indicates that Constituent Assembly did not desire to introduce into India, the concept of


6. AIR 1950 SC 27.
'Procedural Due Process'. In America, the judicial decisions on the point as to 'what was reasonable' had not been uniform. The concept of 'reasonableness' had varied from judge to judge, statute to statute, time to time, and subject to subject. Accordingly, it was feared that if Doctrine of Procedural Due Process was imported in India, then it may lead to complications.

Gopalan case settled two major points in relation to Article 21. One, that Articles 19, 21 and 22 were mutually exclusive, and that Article 19 was not to apply to a law affecting personal liberty. Two, a law affecting personal liberty could not be declared unconstitutional merely because it lacked 'Natural Justice or Due Process'. This holding in Gopalan case held the field for almost three decades.

Gopalan case was characterised as the 'high water mark' of legal positivism. Court's approach in Gopalan case was strictly and purely literal, and was too much colored by 'positivistic' or imperative theory of law.

As interpreted in Gopalan case, Article 21 gave carte blanche to a legislature to enact a law to provide for arrest of a person by adopting any procedure, even without much procedural safeguards. Article 21 provided no protection against competent legislative action. It gave final say to the legislature to decide what was to be the procedure while curtailing the personal liberty of a person in a given situation, and what procedural safeguards he would enjoy. Such an interpretation, made Article 21 impotent against legislative power which could
make any law, however drastic, to impose restrictions on personal liberty without being obligated to lay down any 'reasonable procedure' for the purpose. The Courts could not judge whether a law for fair or reasonable procedure.

Justice Fazl Ali, disagreed with majority on this point, and he interpreted the phrase 'procedure established by law' in Article 21 as implying 'Procedural Due Process', meaning thereby that 'no person could be condemned unheard' - a principle well-recognized in all modern civilized legal systems.

It is humbly submitted that there is not much vagueness about the essentials of 'Procedural Due Process' because it basically means 'fair hearing' which is a very well-known concept. The concept of 'Due Process', which is considered by majority in Gopalan case as vague and variable, is incorporated to some extent in Article 19 also - in the form of 'reasonableness' of restrictions imposed on the rights guaranteed under Article 19(1). Accordingly, the word 'law' in Article 21 could have been construed broadly than mere 'enacted law' so as to lay down that the right of 'fair hearing' to the person deprived of his personal liberty was an essential element of 'law' in Article 21, and that no law denying this basic and elementary right to the individual would be valid. This would have imposed, at least some restriction on the legislature to make a law affecting an individual's personal liberty.

In Gopalan case, the Supreme Court had de-linked Articles 19, 21 and 22. This view, albeit held the ground for some time,
but it resulted in anomalous results at times, according it was softened in the course of time. And R.C. Cooper v Union of India marked the beginning, wherein it argued that if Article 19(1)(f) was linked with Article 31(2), then there was no reason why Article 19 could not be linked with Articles 21 and 22. The Supreme Court recognized the force of argument and held that in Shambhu Nath Sarkar v State of West Bengal the approach of the Court in Bank Nationalization case had been held the major premise of majority in Gopalan case to be incorrect.

Later, in Bennett Coleman & Co. v Union of India, the Court completely knocked out the earlier argument in Gopalan case that Article 19 applied only when a law was passed directly in respect of a matter falling under it, and not when, a law not directly in respect of a right under Article 19, still abridged such a right. The Court emphasized that in Gopalan case the

question was only to consider the 'directness' of legislation and not what would be the result of the law on a right under Article 19. Therefore, even though 'preventive detention' deprived a person of several rights under Article 19, the validity thereof could not adjudged under the Article. This view no longer holds after Bennett Coleman case.

After the traumatic experience of eighteen months of emergency during 1975-77, the apex court became very liberal, and a great transformation has come about in the judicial attitude towards the protection of personal liberty. And the resultant is the landmark judgment of the Post-emergency period in Maneka Gandhi v Union of India. In Maneka Gandhi case the Court has practically over-ruled Gopalan case and re-interpreted Article 21 giving it fullest vigor.

The facts of Maneka Gandhi case are that Maneka Gandhi's passport was impounded under the Passport Act by the Central Government. The Section 10(3)(c) of the said Act authorizes the passport authority to impound a passport if it deems it necessary so to do in the interest of the sovereignty and integrity of India, the security of India, or in the interest of general public. Maneka Gandhi's passport was impounded in the interest of general public. She filed a writ petition challenging the order

10. Supra note 1.
on the ground of violation of her fundamental rights under Article 21. One of the major grounds of contention was that the order impounding the passport was null and void as it had been made without affording her an opportunity of being heard in her defense. The case was heard by a bench of seven judges. Ex Justice P.N. Bhagwati delivered an opinion of behalf of himself, Justices Untwalia and Fazl Ali. While Justices Chandrachud, Krishna Iyer, and Chief Justice Beg, in their separate judgments, concurred. Justice Kailasam, however, dissented. The Court laid down a number of propositions in Maneka Gandhi case with respect to Article 21, thus making it more meaningful. Firstly, the Court laid down the proposition that Articles 14, 19 and 21 were not mutually exclusive. This means a law prescribing a procedure for depriving a person of 'personal liberty' has to meet the requirements of Article 19, and the 'procedure established by law' in Article 21 must answer the requirements of Article 14 as well. Secondly, the Court's re-interpretation of the expression 'procedure established by law' in Article 21 gave it a new orientation. Court laid down that 'procedure' must satisfy certain requisites in the sense of being 'fair and reasonable', and it cannot be 'arbitrary, unfair or unreasonable'. The procedure must answer the test of 'reasonableness' in order to conform with Article 14 because the principle of reasonableness
which is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. Thus, the 'procedure' in Article 21 must be 'just, fair and reasonable' and not any 'arbitrary, fanciful or oppressive', otherwise it would be no procedure at all and the requirements of Article 21 would not be satisfied. Justice Krishna Iyer observed that 'procedure' in Article 21 means fair, and not formal procedure, and 'law' means 'reasonable law' and not any enacted piece.

It is humbly submitted that this interpretation makes the words 'procedure established by law', by and large synonymous with the 'procedural due process' in United States Constitution.

Thirdly, the expression 'personal liberty' in Article 21 was given a wide amplitude covering a variety of rights 'which go to constitute the personal liberty of a man'. Some of these attributes have been given the status of distinct fundamental rights and are given additional protection under Article 19.

Maneka Gandhi's case carries with it multifaceted impact. Firstly, after this case, Article 21 has assumed highly activist magnitude. The Gopalan case, which had held the field for three long decades is completely over-ruled by Maneka Gandhi case, and in Post Maneka Gandhi Period, Indian Supreme court has again and again under-lined the theme that Articles 14, 19 and 21 are not mutually exclusive, but they sustain, strengthen and nourish each

11. Supra note 1, Per Justice P.N.Bhagwati, at p. 624.
other. For a long time, personal liberty occupied a back seat in India but Maneka Gandhi case has brought this fundamental right to prominent place which it, infact deserves in a democratic society. In a number of cases in Post-Maneka Gandhi Period, the Supreme Court has given content to the concept of 'procedural fairness' in relation to personal liberty. Secondly, Maneka Gandhi case has deeply influenced the administration of 'criminal justice' and 'prison administration'. In a number of cases the Supreme Court has expounded several propositions with a view to humanize the administration of 'criminal justice' in all it's aspects. Thirdly, Maneka Gandhi case has made a significant impact on the development of Administrative Law in India.

But one question remains unanswered in Maneka Gandhi case, i.e., can a 'law' laying down unreasonable procedure be declared to be unconstitutional under Article 21 or is it only 'action of the administration' depriving personal liberty that is invalid. It is humbly submitted that it is possible to read elements of reasonable procedure in the statute in question, as for example by bringing in 'principle of natural justice'. But then there may be odd case where it may not be possible to do so. In such a case, the court may declare the 'law' itself as unconstitutional by reading Article 21 along with Articles 14 and 19. The court

specifically ruled in Maneka Gandhi case that Article 14 outlaws unreasonableness and arbitrariness.

In Bachchan Singh v State of Punjab, Justice Sarkaria observed that if Article 21 is expanded in accordance with interpretative principle as indicated in Maneka Gandhi case, it will read as under:

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

Accordingly, in Maneka Gandhi case, the 'Due Process Clause' in 5th and 14th Amendment to United States Constitution, which was considered in Constituent Assembly Debates but was deliberately dropped, and later in Gopalan case again expressly rejected, was imported in Article 21 in and after Maneka Gandhi case. In this context, Prof. Upendra Baxi observed, "If due process had dies three early deaths, i.e., in Constituent Assembly, in Gopalan case, and Shivkant Shukla case, during emergency, it was re-born in Maneka case. Once re-born, Justices decided on a vigorous breast feeding of the new infant. They did not let a single occasion go by in which due process interpretation of Article could be nurtured to a giant infant."


14. Ibid., at p. 730

In A.K.Roy v Union of India, Ex. Chief Justice Chandrachud, Indian Supreme Court, however, cautioned that the decisions of the United States Supreme Court on 'due process' clause occurring in United States Constitution cannot be applied in whole sale manner for resolving questions which arise in India under Article 21, especially when after deliberate discussions on the incorporation of the 'clause' in Article 21 in Constituent Assembly was rejected and the Assembly had decided against the import of 'due process clause' in India.

Maneka Gandhi case will always be a guiding star for the Courts while dealing with denial of fundamental rights of the masses. The words 'just, fair and reasonable' are golden words that will always stand against the arbitrary executive actions even when complained action is supported by law because now the 'procedure' shall have to pass the test of 'justness, fairness and reasonableness'.

Thus, by amplifying the scope of Article 21, the Court has come closer to the poor and indigent, to help the helpless undertrails, who are languishing in jails, political activists who are punitively detained, and many other categories of persons who are victims of arbitrary and inhumane executive excesses. Maneka Gandhi case has indeed sown the seeds for future development of

law by creating new dimensions of article 21 and expanding the scope and ambit of right to 'life' and 'personal liberty'.

1. **PRISON JUSTICE**

The ruling of *Maneka Gandhi case* has had a great impact on the administration of criminal justice in India. The conditions and state of things prevailing in prisons have long been extremely deplorable. Every day there is news of prison maladministration, inordinately long delay in trial of criminal cases resulting in grave miscarriage of justice, incidents of police brutality, etc.

By re-interpreting Article 21 in *Maneka Gandhi case*, the Supreme Court has found a potent tool to seek to improve matters in the area of criminal justice. The golden key to this judicial activism is the holding in *Maneka Gandhi case* that expression 'procedure established by law' in Article 21 does not mean 'any procedure' laid down in statute but it should be 'just, fair and reasonable' procedure, and that term 'law' in Article 21 also does not mean 'any law' but it envisages 'right, just and fair' and not 'arbitrary, fanciful or oppressive' law. An arbitrary law violates Article 14. Sameway, arbitrary procedure would be no procedure at all and in that case the requirements of Article 21 would not be complied with. Any procedure which is harsh,
unreasonable and prejudicial to the accused cannot be in consonance with Article 21.

Accordingly, on this touchstone of Maneka Gandhi's ruling the Indian Supreme Court has, in a number of cases tested various aspects of criminal justice and administration of prisons. Article 21 has protected all persons, whether persons accused of an offense, under-trial prisoners, prisoners under going prison sentence, etc. Under this protective umbrella of Articles 14, 19 and 21, all aspects of criminal justice took shelter.

The Supreme Court, by virtue of amplified scope of Article 21, has enhanced the protections given to prisoners whether convicts or under-trials.

P.T.O.
ii. BAR FETTERS

Suni Batra (I). v Delhi Administration is a land-mark decision wherein the Supreme Court has stressed that even the convicts have dignity and whatever liberty they are left with cannot be taken away arbitrarily.

In this case, there were two petitions under Article 32 from two persons confined in Tihar Jail. They challenged the validity of Sections 30 and 56 of Prison's Act. Sunil Batra was convicted of death sentence. He challenged his solitary confinement, and Charles Sobhraj, a French national, an under-trial prisoner challenged the action of jail Superintendent in putting him into bar-fetters for an unusually long time. Justice Desai observed that Section 30(2) enables the prison authorities to impose solitary confinement on a prisoner under a sentence of death not as a consequence of violation of prison discipline but on the sole ground that the prisoner is under sentence of death. It would offend Article 20 - because it imposes 'double jeopardy' - and also Article 14 and 19 - because it is not just, fair and reasonable. If by imposing solitary confinement there is total deprivation of commingling and talking among co-prisoners it is not just and fair and would offend Article 21.

17. AIR 1978 SC 1675.
18. Ibid., at p. 1728.
It was further, observed that Section 30(2) authorizing the Jail authorities to keep the death sentencee in a cell apart from other prisoners, doesn't convey that it is the authorities who are empowered to impose solitary confinement as an additional punishment on the prisoner sentenced to death. But such punishment can be added by Courts only. Similarly, the Court ruled that bar fetters make a serious in-road in the limited personal liberty which a prisoner is left with. Such a punishment can be imposed only to secure the safe custody of the prisoner taking into consideration the character, antecedents and propensities of the prisoners. And these are the only relevant considerations to determine whether there is the necessity to put a prisoner in bar fetters. In order to determine - whether there is need to put a prisoner in bar fetters - the answer to it must be given after application of mind to the peculiar and special characteristics of each individual prisoner, to the nature and length of sentence or to the magnitude of the crime committed by the prisoner. Justice Desai observed that Section 56 of the Prison's Act authorizes the Superintendent to put a prisoner in bar fetters when he considers necessary with reference either to the state of the prisoner or character of prisoner, and for the safe custody of the prisoner, but it does not permit the use of

19. Supra note 17, at p. 1729.
bar fetter for an unusually long period, day and night, and that too when the prisoner is confined in secure cell from where escape is somewhat inconceivable.

Justice Krishna Iyer observed:

"Part III of the Constitution does not part company with the prisoners at the gates and judicial oversight protects the prisoners shrunken fundamental rights if flouted, frowned upon or frozen by the prison authorities."

Thus, in Sunil Batra (I) case, widened the scope of Article 21 and crossed the prison walls to protect the life and liberties of convicts, denues and even death sentences. The convicts cannot be subjected to indignities violating Article 21, not can their remaining liberties be taken away by the Jail authorities. Even the death sentencee until it is executed has the right to be treated with dignity. He is entitled to freedom from crippling on body, mind and moral fibre. In the words of Justice Krishna Iyer, "Law in India stands for life, even for dying man's life."

20. Supra note 17, at pp. 1733-1735.
21. Ibid., at p. 1690.
22. Ibid, at p. 1692.
In *Sunil Batra (II) v Delhi Administration*, the Court observed that no personal harm, whether by way of punishment or otherwise, is to be suffered by the prisoner without affording a preventive or, in special cases, *post facto* remedy before an impartial, competent, available agency. The goal of imprisonment is not only punitive but is also restorative, to make an offender a non-offender. The Court also gave various directives to improve many aspects of prison administration and conditions of prisoners.

If a prisoner is sentenced to death, it is lawful to execute that sentence and only that sentence. He cannot be subjected to humiliation, torture, or degradation before the execution of death sentence, not even as necessary steps in the execution of sentence because that will amount to inflicting a


24. *Deena v Union of India*, AIR 1983 SC 1155, at p.1186,

Section 354(5) of the Criminal Procedure Code was challenged on the ground that 'hanging' a convict by a rope is a cruel and barbarous method of executing death sentence which is violative of Article 21 of Indian Constitution. The Court held that method provided for executing death sentence was not in any way violative of provisions of Article 21.
punishment on the prisoner which does not have the authority of law. Humaneness is the hallmark of civilized laws. Therefore, torture, brutality, barbarity, humiliation and degradation of any kind is impermissible in execution of any sentence. For under-trials, Justice Krishna Iyer favored even more relaxed conditions because they are deemed to be in custody and not undergoing punitive imprisonment.

Justice Krishna Iyer ordered that fetters, especially bar fetters be shunned as violative of human dignity within and without prisons. Indiscriminate resort to handcuffs when accused persons are taken to and from the court, and forcing irons on prison inmates were illegal and should be stopped forthwith except where an under-trial had a credible tendency of violence and escape. The judge observed that reckless 'handcuffing' and chaining in public degrades, puts to shame finer sensibilities and is slur on our culture.

Thus, after Maneka Gandhi case, followed by Sunil Batra case, Article 21 has become sanctuary of human values, prescribes fair procedure, and forbids barbarities, punitive or processual.

In Sunil Batra (II) case, wherein the petitioner sent a complaint through a letter to the Supreme Court regarding the inhumane torture to his co-prisoner by Jail authorities and many

25. Supra note 17.


27. Supra note 23.
other indignities to which the prisoners, whether convicts or under-trials were subjected to. The Court ruled that no prisoner can be personally subjected to deprivations, not necessitated by the fact of incarceration and the sentence of Court. The prisoner can enjoy all the other freedoms, e.g., to read, to write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities like compulsory nudity, forced sodomy, and other unbearable vulgarity, to movement within the prison campus subject to the requirements of discipline and security, to the minimal joys of self expression, to acquire skills and techniques and all other fundamental rights tailored to the limitation of imprisonment.

The Court expanded the scope of writ of habeas corpus so that now the freedom is not confined to freedom from restraint, but according to new interpretation a prisoner is entitled to the writ of habeas corpus, though he is in lawful custody, but is deprived of some right to which he is lawfully entitled even in his confinement because the deprivation of it serves to make his imprisonment more burdensome than the law allows, or curtails his 'liberty' to a greater extent than the law permits. A prisoner can now make use of habeas corpus to protect his other inherent

28. Supra note 23, at p. 1593.
Accordingly, *Sunil Batra II* has pulled down iron curtains of prison's walls and has put restraints upon the prison officers. Under the rigorous punishment, the inmates are obliged to do hard labour. If a vindictive officer victimizes a prisoner by forcing on him harsh and degrading jobs, for example if a prisoner is forced to carry night soil, the victim may seek a writ of habeas corpus. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs.

### iii. HAND CUFFING

The human rights conscious Supreme Court has on several occasions made weighty pronouncements decrying and severely condemning the conduct of escort police in 'hand cuffing'

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29. In *Md.Gaisuddin v State of Andhra Pradesh*, (1977) 3 SCC 443, the Court not merely reduced the sentence of twenty eight years old appellant but also directed the jail authorities not to assign him any monotonous, mechanical or degrading type of work, but of mental, intellectual or like type.

prisoners/under-trials without any justification. Justice Krishna Iyer, speaking for himself and Justice Chinnappa Reddy, in Prem Shanker Shukla v Delhi Administration had emphasized that 'handcuffs' should not be used in routine and they were to be used in 'rarest of rare cases' and only when the person was 'desperate', 'rowdy' or the one who was involved in non-bailable offence. Justice Krishna Iyer observed,

"[T]he guarantee of human dignity, which forms part of our Constitutional culture, and the positive provisions of Articles 14, 19 and 21 spring into action when we realize that to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security...."

He further observed:

"Handcuffing is prima facie inhuman, and therefore, unreasonable, is overharsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21....

32. Ibid, at p. 1541; at p. 537:.
33. Ibid., at p. 1536.
To prevent the escape of an under-trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in courts is to torture him, defile his dignity, vulgarize society and foul the soul of our Constitutional culture.

In Kishore Singh v State of Rajasthan, a writ petition for habeas corpus was initiated by a telegram that some prisoners in Jaipur Central Jail were being kept in solitary confinement from 8-11 months and in bar fetters. Justice Krishna Iyer ordered immediate removal of bar fetters and liberation from solitary confinement. The Supreme Court that Article 21 is keeper of human dignity and the police cannot use third degree methods against the prisoners. The Court reiterated that no prisoner should be 'hand cuffed' or 'foot cuffed' and put under bar fetters except in 'rarest of the rare cases' and that too after complying with the 'principles of natural justice'. Justice Krishna Iyer observed, "Human dignity is a dear value of our Constitution not to be bartered away for mere apprehensions entertained by Jail Officials."

34. Supra note31, at p. 1541; at p. 537.
35. AIR 1981 SC 625.
36. Ibid., at p. 630.
In a recent case of Sunil Gupta v State of Madhya Pradesh, the key question was:

"Whether petitioners on being arrested were subjected to torture and treated in a degrading and inhuman manner by 'hand cuffing' and parading them through the public thorough-fare during transit to the Court in utter disregard to the judicial mandates declared in a number of decisions of the Supreme Court, and whether they were entitled for compensation?"

In this case facts were that the petitioners, Sunil Gupta and Raj Narain were social workers and members of 'Kisan Admivasi Sangathan', Kerala. The said 'Sangathan' was actively working against all kinds of exploitations purported against the local farmers and tribal people in Hoshangabad District. In one of the villages of this District, only one school teacher was employed who was not attending the schools for last one and a half year. And when the authorities gave deaf ear to several complaints in this regard, the petitioners, along with a number of children and tribal women, staged a 'peaceful dharna' in front of the office of Block Education Officer, Kerala, demanding appointment of two regular teaches in the said school. The Assistant District

38. Ibid., at p. 120.
Inspector of Schools gave an assurance in writing that he would make inquiries and initiate action in that regard. But to the petitioner’s disappointment, the local police initiated criminal proceedings against the petitioners and one Adivasi widow for an offence punishable under Section 186, Indian Penal Code, on the ground that petitioners and Adivasi women have obstructed public servants in discharge of their public functions. The petitioners however alleged that they were arrested, abused, beaten and taken to the Court of Ist Class Judicial Magistrate, Hoshangabad, by ‘hand cuffing’ them. The Magistrate convicted the petitioners and sentenced them to undergo simple imprisonment of one month, while the Adivasi woman was acquitted. The petitioners had further alleged that after the pronouncement of judgment the police once again abused them, made obscene gestures, beaten and took them to the penitentiary handcuffed. The police denied these allegations. The Court concluded that the escort party neither got instructions nor obtained any orders in writing from the Magistrate or the Jail Superintendent regarding ‘hand cuffing’ of the petitioners. They also did not note any reasons for ‘hand cuffing’ the petitioners. The Supreme Court directed the government of Madhya Pradesh to take appropriate action against the erring escort party for having unjustly and unreasonably

39. Supra note 37. at pp. 120-121.
hand cuffing the petitioners.

Thus, the Court felt distressed at the way petitioners were hand cuffed while being taken from court to Jail. In this case, the petitioners were working for the welfare of weaker sections and downtrodden people in peaceful manner, but were treated by the police in inhumanely manner, against all norms of decency in utter disregard of the repeated and consistent mandates of the Supreme Court and fundamental rights of the petitioners under Articles 14, 19 and 21 of the Constitution. The Supreme Court strongly condemning the conduct of the escort party in arbitrarily and unreasonably humiliating the citizens of the country with the obvious motive of pleasing 'some one' correctly observed:

"It is most painful to note that the petitioners No.1 and 2 who staged 'dharna' for public cause and voluntarily submitted themselves for arrest and who had no tendency to escape had been subjected to humiliation by being hand cuffed which act of the escort party (was) against all norms of decency and which is in utter violation of the principle underlying Article 21 of the Constitution of India."

40. Supra note 37, at p. 126.
iv. **RIGHT TO 'LIFE', 'HUMAN DIGNITY' AND 'LIVELIHOOD'**

The right to 'life' enshrined in Article 21 is something more than just 'physical survival'. It includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one self in diverse forms, freely moving about, and mixing and commingling with fellow beings. Any form of torture, or cruel, inhumane or degrading treatment would be offensive to human dignity and constitute an inroad into this right to 'life' and Article 21.

42 In Francis Coralie case, a British National who was arrested and detained under COFEPOSA Act, was denied effective interview with her lawyers and meeting her little daughter save once a month, by virtue of sub-clauses (i) and (ii) of clause 3(b) of conditions of detention laid down by Delhi Administration under Section 5 of COFEPOSA Act. The Court declared that sub-clause (i) of clause 3(b), regulating the right of detenu to have


42. *Ibid.*
interviews with lawyers of her choice, and sub-clause (ii) of clause 3(b) which permits only one interview in a month to a detenu with members of his/her family, are violative of Article 14 and 21, and such are unconstitutional and void.

The Court observed that the power of preventive detention has been recognized as a necessary evil and is tolerated in a free society in the larger interest of security of the state and maintenance of public order. But this power is hedged by various safeguards set out in Articles 21 and 22.

The Court held that as a part of right to live with human dignity and therefore as a necessary component of the right to life, a prisoner or detenu would be entitled to have interviews with his family members and friends subject to the prison regulations or procedure, provided they are reasonable, just and fair.

With regard to right to detenu to consult a lawyer, the Court observed that a detenu has a right to consult his legal adviser not only to defend him in criminal proceedings but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or proceeding, civil or criminal. These rights are included in the 'right to live with

43. Supra note 41, at p. 750.

44. Ibid., at p. 753.
human dignity' and are also part of 'personal liberty' and this right of detenu can neither be taken away nor interfered with except in accordance with reasonable, just and fair procedure established by a valid law.

In Marie Andra Leclerc v Delhi Administration a foreign national under life imprisonment and also trial in other criminal charge, was granted permission to go to her home country for one year to get her cancer treated.

In Bhartiya veterinary Education Society, Bangalore v State of Karnataka, Bhartiya Veterinary Education Society and students of Bhartiya Veterinary College established by a society challenged the validity of Section 6-A of the Karnataka University of Agricultural Sciences Act, 1963, as amended in 1985 which prohibited private colleges in the state to get affiliated to any university and threatened to withdraw any such affiliation, if already granted. Petitioner argued the the impugned provision was violative of Article 21 because if the private colleges were denied affiliation and recognition, the students of such colleges will lose their avenues of education thus resulting in loss of source of 'livelihood'.

46. AIR 1988 Karnataka 293.
Justices P.C. Jain and K. Shivashanker Bhatt, constituting the two-judge bench of the Karnataka High Court, held that the right to 'livelihood' recognized as an aspect of Article 21 did not create any positive right in favour of anyone to claim 'means of livelihood' from the government. They reasoned that giving such an broad interpretation of Article 21 would mean that provisions of Article 21 would now mean that 'no one shall be deprived of his right to means of livelihood except according to procedure established by law'. Albeit, Court agreed that the 'means of livelihood' was an integral part of the 'right to live' but the guarantee given by Article 21 was not a positive one. It only meant that the right to 'means of livelihood shall not be deprived except according to procedure established by law'. The Court relied on Olga Tellis v Bombay Municipal Corporation, wherein the petitioners, constituting almost half of the population of the city who live on footpaths and in slums for their survival, filed Public Interest Litigation, by a journalist, against their forcible eviction and demolition of their pavement and slum dwellings alleging violation of their rights under Articles 14, 19 and 21 of the Constitution. The Court, while entertaining the petition held that eviction of petitioners from their dwellings would result in deprivation of -

47. Supra note 46, at p. 304.

their 'livelihood'. The Court observed that Article 21 includes 'livelihood' and so if deprivation of livelihood is not effected by a reasonable procedure established by law, the same would be violative of Article 21.

Accordingly, the Court rejected the argument raised by the petitioners that the impugned provision amounted to depriving them of their right to 'means of livelihood'. The Court observed, that State could not be compelled to allow anyone to start educational institutions of his choice. The monopoly of the State in imparting education in veterinary science or agriculture science, could not be invalidated as violative of right to 'means of livelihood' of the students coming out of unrecognized or unaffiliated colleges.

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In Sankar v Durgapur Projects Limited, however, the Olga Tellis case came to help an employee of Durgapur Projects Ltd. who was provided a decent living accommodation by an order of the High Court of Calcutta. The Petitioner was an upper division clerk, and was entitled to a three-roomed residential accommodation. But his employers asked him to leave the two-roomed quarter where he was already living with his family, and to live in one single room and share the bath, toilet and kitchen with another family. The question before the Court was — whether the State could deprive a worker of a housing accommodation to which he was entitled to, by asking him to shift to one room apartment or face removal. The Court held that the action of

49. AIR 1988 Cal 137.
Durgapur Projects Ltd. in depriving the petitioner of the minimum accommodation amounted to violation of his right to 'live with human dignity'.

The Court relied on Olga Tellis case and observed:
"Compelling a person to live in sub-human conditions also amounts to the taking away of his life, not by execution of a death sentence but by a slow and gradual process by robbing him of all his human qualities and graces, a process which is much more cruel than sending a man to gallows. To convert human existence into animal existence no doubt amounts to taking away human life, because a man lives not by his mere physical existence or by bread alone, but by his human existence."

Another notable case dealing with right to live with 'human dignity' is Vikram Deo Singh Tomar v State of Bihar wherein a social action group called Yuva Adhivakta Kalyan Samiti of Bihar addressed a letter to one of the judges of Supreme Court alleging inhuman treatment of the inmates of Care Home in Patna. Petitioners complained that the female inmates of the Care Home were compelled to live in inhuman conditions in an old dilapidated building and they were provided with insufficient amount of food of poor quality. They were also deprived of

50. Supra note 49, at p.141.

51. AIR 1988 SC 1782,
medical care. The Supreme Court, through Ex. Chief Justice R.S.Pathak, Justices L.M.Sharma and N.D.Ojha, immediately issued notices to the superintendent of Care Home and the State of Bihar, and also simultaneously ordered the District judge, Patna, to visit the Care home and submit a report on the conditions actually prevailing there. The report thus submitted by District judge revealed that the Care Home was nothing more than a crowded hovel, in which a large number of human beings were thrown together, compelled to subsist in conditions of animal survival. On seeing the report, the Court directed the State of Bihar to provide suitable alternate accommodation expeditiously for housing the inmates of the Care Home. The Government was asked to provide them sufficient amenities by way of living rooms, bathrooms, and toilets and also to provide adequate water and electricity.

The Court emphasized that right to 'life' included the 'right to human dignity' and observed:

"We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is a fundamental right of every Indian citizen. And so, in the discharge of its responsibilities to the people, the State recognizes the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and
for whom, therefore, of necessity provision must be made for the protection and welfare."

The Court, while issuing directions to the Government of Bihar, also served a warning for an early compliance of its order failing which, the Court said, the case should be re-opened.

The question arises that as held in Sankar case, if the right to residential accommodation is a part of 'right to live with human dignity' then can a writ be issued directing the State to provide minimum living accommodations to the millions and millions of people in India, who have either no house of their own or live in open or in pavements. The answer of the Court was obviously 'No'. The Court had ruled that through affirmative judicial action Durgapur Projects Ltd. could not be compelled to provide a decent standard of life to the petitioner. But since the petitioner had been deprived of his right to decent living without any just and fair procedure established by law, he was entitled to challenge the deprivation as offending his right to live conferred by Article 21. The Court, accordingly, directed the Durgapur Projects Limited to allot the disputed accommodation to the petitioners.

Thus, in final analysis it is established law that right to life includes right to live with human dignity, albeit 'livelihood' is not a positive right.

52. Supra note 51, at p. 1783.
V. EXECUTION OF DEATH SENTENCE

In Deena v Union of India, Section 354(5) of Criminal Procedure Code was challenged on the ground that hanging a convict by rope was a barbarous method of executing death sentence and therefore violative of Article 21 of the Constitution. The Court held that the method prescribed in Section 354(5) of Criminal Procedure Code for executing death sentence was not violative of Article 21. The Supreme Court reasoned that other alternatives as electrocution, lethal gas or shooting or even lethal injection had no distinct or demonstrable advantage over the system of hanging. However, the death sentence by public hanging has been held to be unconstitutional and violative of Article 21.

In Attorney General of India v Lachma Devi, Ex C.J. P.N. Bhagwati observed:

"The death sentence by public hanging is to our mind, unconstitutional and we may make it clear that if any jail manual were to provide public hanging we would declare it to be violative of Article 21 of the Constitution. It is undoubtedly true that the crime of which the accused has been found guilty is barbaric and a disgrace and shame on any civilized society which no society would tolerate, but a barbaric crime does

53. AIR 1983 SC 361.

54. 1986 Cri.L.J. 364
not have to be visited with a barbaric penalty such as public hanging.

The Court has adopted it's welfare approach even for the hardened criminals. In *T.V. Vetheeswaran v State of Tamil Nadu* the petitioner had committed a number of murders in a very wicked and diabolic manner. He was condemned to death and was kept in a solitary confinement. He complained that keeping him in solitary confinement, for 8 years, was violative of Article 21, and he also alleged that there has been undue delay in execution of his death sentence. Justice Chinnappa Reddy spoke of 'justice to the condemned too' and observed that the delay of execution of death sentence for more than two years should be considered sufficient to entitle a person under death sentence to invoke Article 21 and demand the quashing of the death sentence. Accordingly, the death sentence was commuted to life imprisonment. The ratio of the case was that prolonged delay in the execution of death sentence amounted to deprivation of life of convict in an unjust, unfair and unreasonable manner and thus was unconstitutional.

The above judgment, delivered by Justices Chinnappa Reddy and R.B.Mishra has far reaching implications. The death sentence can always delay the execution of his sentence by resorting to various legal technicalities for more than two years and then allege that the death sentence may be commuted to life imprisonment since it's execution has already been delayed for ---

55.*Supra note* 54, at p. 365.

56.*AIR 1983 SC 361.*
more than two years. The Veetheswaran case was later over-ruled in Sher Singh v State of Punjab, wherein it was laid down that mere delay in carrying out death sentence did not entitle the convict under sentence of death to demand the commutation of death sentence to one of imprisonment for life.

In Mithu v State of Punjab, the issue was whether the death sentence prescribed by Section 303 of Indian Penal Code for the offence of murder committed by a person who is under a sentence of life imprisonment is arbitrary and oppressive, and therefore violative of Article 21 of the Constitution. Ex C.J. Chandrachud held that Section 303 of Indian Penal Code violated the guarantees conferred by Articles 14 and 21, and accordingly was unconstitutional and void. Justice Chinnappa Reddy in his concurring judgment observed:

"Section 303, Indian Penal Code is an anachronism. It is out of time with the march of times. It is out of time with rising tide of human consciousness. It is out of time with philosophy of an enlightened Constitution like ours. It particularly offends Article 21 and the new jurisprudence which has sprung around it ever since Bank Nationalization case and freed it from confines of Gopalan."

57. AIR 1983 SC 465.
59. Ibid., at p. 296.
60. R.C. Cooper v Union of India, AIR 1970 SC 564.
Thus, the judiciary is expanding the scope of terms 'life' and 'personal liberty' and coming out of its passive role to rescue the poor actively. The above analysis of the cases show that it is mostly the detenues, and under-trials, belonging to lower class, subjected to indignities, disgrace or emploitation at the hands of hardened criminals in jails and the staff are benefited by the liberal attitude of the judiciary.

vi. RIGHT TO LEGAL AID

The Supreme Court has further expanded the scope of Article 21 by holding that 'free legal services' where the circumstances so demand is also implicit in Article 21, in the landmark case on procedural justice - M.H.Hoskot v State of Maharashtra. The Court held that the most important ingredient of a fair procedure to the persons detained punitively or preventively, who are seeking liberation through court procedure, is 'lawyer's service'. 'Judicial justice' is full of legal intricacies and involves legal submissions and critical evaluation of evidence, and thus is heavily dependent upon professional expertise. So if professional skill is absent on one side, the Constitutionally cherished goal of 'equal justice' would fail. No under-trial can be assured of fair trial unless he is provided with the services of a lawyer.

'Equality before law' is just an empty declaration for the poor person if in the court litigation he is pitted against the rich and powerful with a number of competent lawyers to advise him. On the fate of such a poor person with out even a single lawyer to advice him, Prof. Vence has observed:

"What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the Courts are open to him on the same terms as to all other persons when he has not the where-withal to pay the admission fee."

The above statement of American jurist, Prof. Vence is literally applicable to Indian position also. Unless and until poor person is provided with free legal services, he cannot get justice. The 'right to be heard' is also useless if poor person cannot be heard through lawyer, and to engage a lawyer he has to pay the lawyer. Infact, with out a lawyer at his back a person may be put on trial without any proper charged and be convicted upon incompetent evidence or irrelevant evidence which neither touches the issue nor is otherwise admissible. Poor person needs the guiding hand of a lawyer at every step of the proceedings because without the advice of the lawyer, even though he may not be guilty of an offence made against him, still he faces the danger of conviction because he does not know how to establish

his innocence. The resultant injustice may be so intolerable for him that he may turn violent.

It would be appropriate to cite here the observation of Justice Brennan:

"Nothing rankles the human heart more than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law as doubtful luxury, and the poor who need it most, cannot have it because it's expenses put it beyond their reach, the threat to democracy is not imaginary but real, because the democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."

Therefore, it is well settled and well recognized that free legal aid to the poor is an essential right falling within the protection of Article 21.

vii. RIGHT TO SPEEDY TRIAL

Justice delayed is justice denied for delay is the greatest evil causing grave injustice to the poor person. It acts harshly in two ways. Firstly, persons who can not wait do not

64. Quoted in M.H.Hoskot case, Supra note 62.
even file the petition because of the apprehension that a long time will be consumed in final outcome of the case or settlement. Secondly, delay often leads to unfair settlements and compromises as triumph of powerful over weak. For instance, in case of a claim for wages, speedy trial is the very essence of justice because the litigation itself is for obtaining the means of livelihood and if there is long trial it can break the back, and weaken the spirits of the poor person to further fight because he cannot afford to have a long trial. If a judgment is delivered after years or may be months, even though it is in favour of poor person, still it is no better than no judgment at all. It may be civil dispute or a criminal proceeding, delay causes injustice to the poor. Another glaring example is Hussainara Khatoon case, a pathetic demonstration of sufferings undergone by the under-trials due to dilatory procedures. In such criminal cases, delay for under-trials acts very badly both on him both physically and mentally because a poor defendant cannot furnish bail, and delay is equivalent to a sentence of imprisonment and his offence being his 'poverty'. The main reason for delay is, usually, faulty court organization and thoroughly antiquated Civil and Criminal Procedure.

In Hussainara Khatoon case Court infact was shocked to learn that such a large number of under-trials inclusive of women and children were languishing in jails of Bihar for three to ten

years awaiting trials. Two main reasons were seen, by the Court, for denial of justice to the poor who were in pre-trial detention for long years, which were:

i. The highly unsatisfactory bail system which suffered from property oriented approach, and

ii. The notorious delay in disposal of cases.

The Court ruled that 'speedy trial is the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice.

The Court referred to Sixth Amendment to the United States Constitution which provides that in all criminal prosecutions the accused shall enjoy the right to speedy and public trial. Also, Article 3 of the European Convention on Human Rights provides that everyone arrested or detained shall be entitled to a trial within a reasonable time or to release pending trial. The Court, thus, observed that even under Indian Constitution, even though there is no specific mention of right to speedy trial as fundamental right, it is still implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi case.

In Hussainara Khatoon case the Supreme Court held that a procedure prescribed by law for depriving a person of his liberty cannot be 'just, fair and reasonable' unless that procedure ensures a speedy trial for the determination of the guilt of such

66. Supra note 65, at p. 88.
person. The Court observed:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair and just' and it would fall in foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of fundamental right to life and liberty enshrined in Article 21."

Again Kedra Pahadiya v State of Bihar, is a clear example of callousness and indifference towards under-trial prisoners on the part of Indian legal and judicial machinery. In this case, four young persons who were in jails for a period of about eight years without their trial having made any progress. Infact, when they came to jail, they were just 'naked goat herds' between the age group of 12-13 years, but when a researcher, Dr. Dhagamvar noticed them, they were young men between the age group of 18-22 years. Justice Bhagwati, cynically remarked, "It is a crying shame upon our adjudicatory system which keeps men in jail for years on and without a trial," and was surprised as to "why our justice system has become so dehumanized that lawyers and judges do not feel a sense of revolt at caging people in jail for years without a trial."

67. Supra note 65.
69. Ibid., at p. 940.
Despite the Court's proclaimed declaration in Hussainara Khatoon case that speedy trial is a fundamental right of every accused, still there are large number of instances which have not even come before the Court. They are in jails for years due to indifferent attitude of the courts and the police.

In State of Maharashtra v Champaklal, the Supreme Court observed that in deciding the question - whether there has been denial of right to speedy trial - the court is entitled to take into consideration whether the defendant was himself responsible for a delay, and whether he was prejudiced in the preparation of his defense by reason of delay, or whether the delay was unintentional caused by over-crowding or the court's docket or by under-staffing of the prosecutors.

Accordingly, as delay can be used, both by prosecution and defendant for their own profits to the disadvantage of the other side, and rich and reluctant accused would delay as defensive tactic so that with the passage of time memories fade and witnesses vanish rendering the 'onus' on prosecution more cumbersome, the Court in Champaklal case tried to check this tactic. Infact, prosecution agencies also resort to delaying tactics when the evidence is of weak character and conviction, it is apprehended that conviction is not the probable result. So to keep the accused persons in incarceration as long as possible and

70. AIR 1981 SC 1675.
71. Ibid., at p.1677.
to harass him, they resort to delaying tactics. The Court was aware of the fact that hundreds of poverty-stricken, dumb, illiterate, ignorant of law and its procedure, too "feeble and mild" accused persons would not protest against their languishing in jails awaiting trials for months and years because of the tardiness, indifference or deliberate inactivity or insensibility of prosecuting agencies. Thus, for delay in trial either the accused himself is responsible or the prosecuting agency is responsible. Both make the use of 'delay' as it suits them even though it harms the cause of justice.

Albeit, speedy trial is declared a fundamental right of every under-trial accused, the Court in Champaklal case ruled that conviction cannot be quashed on the sole ground of delayed trial. It will depend upon the facts and circumstances of each case. If during the trial, the accused is found to be prejudiced in the conduct of his defense, and it can be said that the accused has thus been denied of an adequate opportunity to defend himself, then the conviction would be quashed, but if there are no such circumstances entitling the Court to raise a presumption that the accused had been prejudiced, there will be no justification to quash the conviction on the ground of delay only.

Thus, the present position is that one who alleges violation of his right to speedy trial implicit in Article 21

72. Supra note 70, at p. 1678.
will have to prove to the satisfaction of the Court that:

i. The trial has been reasonably delayed;

ii. The accused has not contributed to the delay by resorting to delaying tactics;

iii. Owing to prosecuting somnolence or long time taken by the trial judiciary itself, the trial has not even begun;

iv. The delay was not 'unintentional and caused by over crowding of court's dockets or by under-staffing of prosecutors.

It is humbly submitted that it may the lawyer, never the accused person himself, who resorts to different tactics or who may guide his client to adopt certain course to avoid trial if the result is probable conviction according to the counsel. Therefore, in the ultimate analysis, it is the professional irresponsibility of the lawyer, and not any fault of the accused, which contributes to the delay. The professional indiscipline of the lawyers must not rob the accused of his fundamental right to speedy trial. Moreover, if the lawyer or even the accused adopts delaying tactics, why shouldn't the judge be vigilant enough to disallow such capricious adjournments and postponements? Judicial wisdom can surely check such delaying tactics.

Another reason given by the Court is 'unintentional delay due to over crowding of dockets or under staffing of prosecuting agencies.' Now if the Government does not fill up the existing vacancies in the Courts or does not add the strength commensurate
with the work load of the court then why should the accused, who
might be acquitted spotless because no charge could be proved
against him, suffer. Under-staffing acts prejudicial to the
interest of the accused and takes away his valuable rights.
Right to speedy trial, recognized by the court itself as implicit
in Article 21, imposes a positive duty upon the Government to act
and keep adequate strength of it's staff so that it may dispose
of the cases within a reasonable time. No doubt, delay owing to
under-staffing is un-intentional, but still it acts against an
accused. One can say it is a negligence and irresponsibility,
and the result of the same, accused has to bear. The
irresponsible indifference and culpable negligence of the
executive violates the fundamental right of the accused to speedy
trial. Such a violation should not be defended by the Supreme
Court by using the word 'unintentional'. If this defense is
given to the State, even in cases wherein the accused proves that
his defense has been prejudiced because of delay, the State can
argue back that this prejudice was an 'unintentional' resultant
of over-crowding and under-staffing.

The Court relied on Stunk v United States while creating
the giving the defense of 'over-crowding of dockets or under-
staffing' to the State, in Champaklal's case. But Stunk's case
has not been properly understood because it does not say that
'over-crowding of dockets or under-staffing' should be taken as
defense by the government for the delay. In Stunk case the court

had observed that delay due to such factors is to be weighed less heavily than the intentional delay, calculated to hamper the defense of the accused, but such unintentional delays must nevertheless be considered in determining whether the 6th Amendment of the Constitution giving right to speedy trial has been violated since the ultimate responsibility for such circumstances must rest with the government rather than the defendant.

In *Barker v. Vingo* also, in the same vein, the United States Supreme Court observed that in determining the question whether a defendant has been denied his right to speedy trial, different weightage should be assigned by the courts to different reasons for delay of the case by the government. An intentional and deliberate delay in trial in order to hamper the defense should be naturally weighed heavily against the government whereas a more neutral reason such as negligence or over crowded courts should be weighed less heavily, but nevertheless should be considered, since ultimate responsibility for such circumstances must rest with the government rather than the defendant.

Moreover, the results of delay is the same, that is, prejudicial to the defense, whether delay is intentional or unintentional. It is settled that the governmental delay which is oppressive or purposeful is surely unjustifiable. The same is true of any governmental delay which is unnecessary, whether negligently caused or intentionally caused. Justices Brennan and

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74, 33 L. Ed. 2nd 101
Marshall, in their concurring opinion observed, "A negligent failure by the government to ensure speedy trial is virtually as damaging to the interests protected by the rights as an intentional failure."

The right to speedy trial is a hard reality and not merely a theoretical or abstract right. Because of delay in trial, the accused has to suffer penalties and disabilities of prolonged prosecution.

viii. WOMEN AND CHILDREN

Women and children have been given special attention by the courts. When a journalist, Sheela Barse herself, in Sheela Barse v State of Maharashtra, filed Public Interest Litigation alleging custodial violence to women suspects in police lock up, the Court besides laying down guidelines for the protection of female suspects, also ruled that every under-trial has the right to legal aid under Article 21. The gave following guidelines for the benefit and protection of female suspects:

i. There should be separate lock ups for female suspects prisoners guided by female constables.

ii. Interrogation of females should be carried out only in the presence of female police officers/constables.


76. AIR 1983 SC 378.
iii. Session judge, preferably a lady judge nominated by him shall make surprise visits to police lock ups periodically to provide arrested persons an opportunity to air their grievances and ascertaining for himself/herself the conditions of police lock up and whether directions of Supreme Court and provisions of law are being properly observed.

Besides, some general guide-lines applicable to both male and female prisoners were also given by the Court as:

i. Whenever a person is arrested and taken to police lock up, the police shall immediately inform the nearest legal aid office to provide legal assistance at state cost if he is willing to accept such legal assistance.

ii. As soon as a person is arrested, the police shall immediately obtain from him the name of the relative or friend whom he would like to inform.

iii. The Magistrate before whom the arrested person is produced must inquire from the arrested person if he has any complaint of torture or mal-treatment in police custody, and inform him that he has a right under Section 54 of the Code of Criminal Procedure, 1973, to be medically examined. It is necessary because very often the arrested person is not aware of his right.
In Munna v State of U.P., there were three writ petitioners seeking relief in respect of certain juvenile under-trial prisoners lodged in Kanpur Central Jail instead of Children Home. It was alleged that those juvenile under-trials were being sexually exploited by hardened criminals. The Court observed:

"Juvenile delinquency is, by and large, a product of social and economic mal-adjustment. Even if it is found that these juveniles have committed any offenses, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the jail. Moreover, the object of punishment being reformation we fail to see what social objective can be gained by sending juveniles to jails where they would come into contact with hardened criminals and lose whatever sensitivity they may have to finer and nobler sentiments."

In this case, the Court directed the police as to how to treat the children and the juveniles if they are suspected of some crime.

Accordingly, it is amply clear from the above discussed cases that the judiciary has given a very sympathetic and humanistic interpretation to Article 21 in order to ensure the safety of human liberty, dignity, sentiments and sensitivity of

77. AIR 1982 SC 806.
78. Ibid., at p. 808.
ix. PRISONER'S RIGHT TO GET WAGES

The right of a prisoner to get wages for the work extracted from him in prison by jail authorities is now being brought within the broad sweep of Article 21 by a new interpretation given to Article 21 in *Pooja Bhaskara Vijay Kumara v State of Andhra Pradesh* by the Andhra Pradesh High Court, wherein a public spirited person, a final year law student filed Public Interest Litigation. He had taken a course in 'criminology', so he visited the central jail at Vishakhapatnam. There he was shocked to see that the prisoners convicted of rigorous imprisonment were forced to work without wages and were being exploited by the prison authorities. According to the petitioner this was a violation of Article 23 of the Constitution forbidding the practice of forced labour.

The issue before the court was - whether extraction of work from the prisoners without wages being paid for, amounted to forced labour forbidden by Article 23 of the Constitution? After blot of discussion on the point, the Court came to conclusion that Article 23 could not form the basis of the right of a prisoner to get wages for the essence of rigorous imprisonment was to condemn the prisoner to inconvenience and unpleasantness. According to Court, the claims against forced labour were not 79. AIR 1988 AP 295.
Accordingly, the Court concluded that Article 23 which was a fundamental right, was not intended to be directly available against the state but was in fact a prohibition directed against social practice of one of the members of society against another. Like Article 17, Article 23 was not a limitation on the state power. But the Court allowed the wages to be given to the prisoner under Article 21 of the Constitution. The Court relied on Olga Tellis case and ruled:

"Paying for work which the Constitution requires under Article 21 would not be inconsistent with the purpose behind the imposition of rigorous imprisonment. On the other hand, such payment would benefit the dependents of the prisoner and would help the prisoner to rehabilitate himself with dignity and social utility. It will work out much cheaper for the State to pay the prisoners decently and rehabilitate them to the maximum extent possible than render them socially useless on their release and burdensome to the community."

The Court held that under Article 21, the prisoners are entitled to be paid for their labour extracted from them while in prison, and if state does not pay them the same then it would be violating the prisoner’s right to life and personal liberty.

80. Supra note79, at p. 297.
81. Ibid., at p. 301.
The Court reasoned that the prisoner may not enjoy his right to life and personal liberty fully as his incarceration takes away a portion of that right. But to the extent, to the enjoyment of which he is entitled to, even while in prison, he is still in entitled to it's protection under Article 21. And since right to life included the right to livelihood, the right of the prisoner to earn his livelihood and to preserve his life, thus imposes a corresponding duty on the state to provide work to the prisoner and also to pay for that work taken from the prisoner. Such a right can only be taken away by a valid law which prescribes just, fair and reasonable procedure for the purpose. And there is no such law which denies payment of wages to prisoners for work extracted from them while in prison. Accordingly, the Court directed the State of Andhra Pradesh to pay the prisoners adequately for the labour done by them. It further directed the State to constitute a committee of a group of competent penologists, sociologists, and economists to consider the various aspects and fix a scale of wages payable to the prisoners which would be fair.

C. LABOUR LAW

In India, Public Interest Litigation has aroused the general consciousness of the people to see and ensure proper observance of various labour laws - like the Employment of Children Act, Bonded Labour System (Abolition) Act, 1976, and the Minimum Wages Act, 1948 - besides the enforcement of fundamental
rights through cooperative and collaborative efforts of the public in general.

In the area of labour law, the judiciary has adopted a highly activist role in ensuring the enforcement of labour laws by the Government and its contractor responsible to follow the law. In People's Union for Democratic Rights v Union of India the Supreme Court entertained Public Interest Litigation praying for a writ for the observance of various labour laws in respect of workmen employed in construction of work of various projects connected with Asian Games. The contractors were registered principal employers under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. For the purpose of carrying out their work, these contractors employed workers, through jamadars who brought them from various corners of the country. The petitioners alleged the violation of Minimum Wages Act, 1948 as the workers were not being paid the minimum wages of Rs. 9.25/-, and also Rs. 1/- was taken by the jamadar as commission. They also alleged violation of Equal Remuneration Act, 1976 because the women workers were paid only Rs. 7/- per day and balance of the amount was being misappropriated by the jamadars in violation of Article 24 of the Constitution of India and the provisions of Children Act 1938 as the children below the age of 14 years were employed by the contractors in the construction

82. AIR 1982 SC 1473.
work of various projects, and violation of Contract Labour (Regulation and Abolition) Act, 1970 as the workers were denied proper living conditions, and medical and other facilities to which they were entitled under the Act, and also violation of the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Delhi Administration took the defense plea that The Employment of Children Act was not applicable in case of industries engaged in construction work because construction industry was not a process specified in schedule. The Court feeling sad about deplorable omission observed that it should be immediately set right by every State Government by amending the schedule so as to include construction industry in it. The Court relied on Article 24 by virtue of which no child below the age of 14 years can be employed to work in any factory or mine or be engaged in any other hazardous employment. The Court held that in the absence of an appropriate legislation the Constitutional prohibition must come to the rescue of young children and construction work being plainly a hazardous employment no child below the age of 14 years can be engaged in construction work.

Another fact which was brought to the notice of the Court was that even where some prosecutions were started against the contractors for the violation of certain labour laws, the Magistrate would take it lightly and impose only small fines upto Rs. 200/-. The Court took a very serious note of this fact and
observed:

"Magistrate seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offenses, undeserving of judicial severity. They seem to overlook the fact that labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying because by violating the labour laws they would be making profit which would far exceed the amount of fine. If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers with out any teeth or claws."

The Supreme Court gave a new interpretation to the term 'forced labour' occurring in Article 23 providing for prohibition of trafficking in human beings and forced labour. The Court held that payment to a worker below the minimum wages provided under the Minimum Wages Act, 1948 will be violative of Article 23 of the Constitution. The Court reasoned that when a person gives labour or services to another on payment which is less than minimum wage, presumably he is acting under the 'force' and of some 'compulsion'. It may be that due to hunger and poverty, want

83. Supra note 82, at p. 1482
and destitution that the person was 'compelled' or 'forced' to work for less wages than minimum fixed by the State. The Court asserted that the word 'force' must be so construed as to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or services even though the remuneration received in turn is less than minimum wage.

It is humbly submitted that perhaps the Court while giving such a wide interpretation to the term 'forced labour' is seeking to stringently deal with all those who are in the habit of violating labour laws one or the other pretext.

In Sanjit Roy v State of Rajasthan, Public Works Department of Rajasthan state undertook the construction of some road as a part of famine relief work. For the said purpose, a large number of workers, men and women were engaged in. It was alleged that these workers were not being paid the minimum wages fixed by the State. The State Government relying on the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 defended that since it was a famine relief work, Minimum Wages Act, 1948 was not applicable to the employees as Section 4 of the 'Exemption Act' provided that no court shall take cognizance of any matter in respect of an employee of famine

84. Supra note 82, at p. 1490.
85. AIR 1983 SC 328.
relief work under labour laws. The Court ruled that Article 23 mandates that no body can be required or permitted to provide labour or service to another on payment of anything less than the minimum wages and if the 'Exemption Act' by excluding the applicability of Minimum Wages Act, 1948, allows non-payment of minimum wages to workmen employed in any famine relief work, it would be clearly violative of Article 23.

The State argued that it was to provide help to persons affected by drought and scarcity conditions that famine relief work was undertaken by the State and therefore it was very difficult to comply with labour laws because it would cripple the potential of the State to give employment to the affected persons and the State would not be able to render help to the maximum number of affected persons. The Court held that since construction of a road was a work for the benefit of the State representing the society, there was no reason why the State should pay anything less than the minimum wage to the affected persons. The state could not be permitted to take advantage of the helpless condition of the affected persons and exact labour or services from them on payment of less than the minimum wages.

Justice Pathak observed, "The granting of relief to persons in distress by giving them employment constitutes merely the motive for giving them work. It cannot affect their right to what is due to every worker."

86. Supra note 85, at p. 333.
87. Ibid., at p. 335.
In Labourers Working in Slal Hydro-Project v State of J & K, the issue before the court was - whether the workmen employed in project work were ensured their rights and benefits which were provided to them under various labour laws, such as Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948, and the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Under the Contract Labour System (Abolition) Act, 1979, the contractor was bound to obtain a license under Section 12(1) of the Act before he could undertake or execute any work through contract labour. In this case, though the contractors had obtained the licensees but the piece wagers who were really the sub-contractors had not cared to obtain such license. The object of not obtaining the required license by the sub-inspectors was to evade their obligations under the Act which provided for some facilities to the workmen employed by contractors for securing their health and welfare, and providing canteens, rest rooms and washing facilities to the workmen.

With respect to employment of children below 14 years in construction work the Supreme Court against maintained it's stand taken in Asiad case that construction work is hazardous employment, therefore no child below the age of 14 years can be allowed to be employed in construction work by virtue of prohibition contained in Article 24 of the Constitution. The

Court feeling deep and genuine concern over the development of children suggested the Central Government that whenever it undertakes a construction project which is likely to last for sometime, the Central Government should provide that children engaged in construction work, who are living at or near the project, be given educational facilities either by the Central Government or by the contractor to whom the project is entrusted.

Again, on enforcement of Minimum Wages Act also the Supreme Court, on the same lines as in Asiad case, directed that wages due to workmen employed by piece wagers or sub-contractors be paid directly without any intervention of Khatedars and no deduction can be made on account of advances alleged to be made by Khatedars. The advances and the messing charges may be paid to Khatedars only after the workmen receive the wages.

This judgment is yet another landmark decision in the enforcement of labour law. It is a step towards the realization of the promise of socio-economic justice enshrined in the Preamble to Indian Constitution.

In R.K. Mishra v State of Bihar, Mr. Ram Kumar Mishra, President of Free legal Aid Committee, Bhagalpur, wrote a letter complaining therein that workmen employed by two Ferries, one at Bhagalpur and other at Sultanganj, were not being paid minimum wages as prescribed by relevant modification under Minimum Wages

89.Supra note 88, at p. 183.

90.AIR 1984 SC 537.
Act, 1948. The Supreme Court held that Bhagalpur and Sultanganj ferries which carried on the business or trade of plying ferries across the river Ganges were clearly within the meaning of the word 'establishment' in Section 2(6) of Bihar Shops and Establishments Act, 1953. Therefore, Minimum Wages Act, 1948, the Court held, would be clearly applicable to employment in the Bhagalpur and Sultanganj ferries.

In Surinder Singh v C.P.W.D., the petitioners had been working for several years on daily wage basis in the employment of Central Public Works Department. They petitioned for wages equal to those of permanent employees doing identical work. The Central Government contended that they cannot pay same wages. The Court rejecting the contention of the Government observed:

"This argument lies ill in the mouth of the Central Government for it is all too familiar argument with the exploiting class and a welfare state committee to socialistic pattern of society cannot be permitted advance such an argument."

The court observed that it is implicit in Article 14 of the Constitution which guarantees 'equal protection before law' and 'equal protection of the law' that there must be 'equal pay for equal work of equal value' and therefore it does not make any difference whether they are appointed on sanctioned post or not. As long as they perform the same duties, they must receive same

91. 1986 (1) SCALE 83.
92. Ibid.
salary also. Thus, the Court allowed the petition.

In Bandhua Mukti Morcha v Union of India, an organization dedicated to the cause of release of bonded labourers in the country filed Public Interest Litigation drawing the attention of the Court to the existence of bonded labourers in Faridabad quarries. It was alleged that labourers were living in inhuman conditions and there were also many cases of fatal injuries caused due to accidents while working in mines, dynamiting the rocks of crushing the stones. Also, the stone dust pollution affected valuable lives, there was lack of adequate medical facilities, and there was non-availability of compensation in case of death or injury. That 99% of workers were migrants from other states but Inter-State Migrant Workmen's Act, 1979 was being flagrantly violated. Infact, Thakedars and middlemen were extracting 30% of the poor miner's wages as ill-gotten commission. The Court appointed Patwardhan Commission with Mr. Ashok Srivastava, Mr. Ashok Pane and Dr. Patwardhan as commissioners to visit the various quarries, collect the data on facts, and report to the court. They, accordingly, reported sad state of affairs. The workers were living in jhuggis which could not protect them from rain and sun, the atmosphere was polluted with stone dust which made it difficult to breathe, many workers were not allowed to leave the quarries and provided 'forced labour', no medical facilities for diseases and injuries existed, no compensation provision for accidental injuries was made and

93. AIR 1984 SC 802.
workers were paid much less than the minimum wages, there was no supply of pure drinking water, there was no conservancy facilities in the form of latrines and urinals, and there were no safety devices for blast firers. The Court entertained the writ petition and directed the Government of Haryana to constitute vigilance committee as required under Section 13 of Bonded Labour System (Abolition) Act, 1976, and instructed the District Magistrates to take up the work of identification and release of bonded labourers as their priority task, and allowed for this purpose assistance of non-political social action groups. The Court also directed to draw up a program for rehabilitation of freed labourers.

The Supreme Court issued as many as 21 directions to both the Central and State Governments in order to ensure the payment of minimum wages to workmen, supply of pure drinking water at accessible points, the provision of conservancy facilities in accordance with the provisions of Section 20 of Mines Act, 1950, and Rules 33 to 36 of Mines Rules, 1955, clean air, provision for free medical facilities, provision for compensation to workmen suffering injuries due to accidents or occupation disease during the course of employment and arising out of employment, enforcement of provisions for Maternity Benefits Act, 1961, Maternity Rules Act, 1966, and Mines Creche Rules 1966. The Court felt the need of every fortnightly visit of inspecting staff to inspect every quarry to ascertain if there was any workman suffering from any disease or illness, needing medical or legal
assistance. The Court said that Central Board of Workers Education should organize periodic camps to educate the workmen regarding the rights and benefits conferred upon them by social welfare and labour laws. Thus, Court appointed Mr. Laxmi Dhar Mishra as Commissioner to visit the quarries and crushers to identify the bonded labourers and arrange for their release and ensure that all directions given by the court are strictly followed.

It is to be noted that the Supreme Court, in this case, was not content with merely passing the directions. It tried to ensure for itself whether the directions were being followed or not. Thus, the Judiciary undertook upon itself the role of an 'ombudsman' and also that of 'enforcing agency' especially in cases of labour legislation. The judiciary has come out as the first friend of labourers and is doing a praise-worthy job to see that labour legislation is in reality enforced. And this is made possible by adoption of a highly activist role by the judiciary.

In *Neerja Chaudhary v State of M.P.*, a correspondent of Statesman newspaper wrote a letter bringing to the notice of the court that by an order of the court passed in first week of March, 1982, the released 135 bonded labourers working in Faridabad stone quarries had not been rehabilitated even after six months of their release and were thus facing immense hardships. The petitioner argued that it was obligatory on the state to ensure rehabilitation of released bonded labourers under the provisions

94.AIR 1984 SC 1099.
of the Bonded Labour System (Abolition) Act, 1976, and failure to do provide rehabilitation assistance amounted to violation of fundamental right guaranteed to the freed bonded labourers under Article 21 of the Constitution. The Court agreed to this argument and observed that it was not enough that bonded labourers were identified and released, but it was equally important that after they were released they must be rehabilitated because if they were not, they would again be driven by poverty, helplessness and despair into serfdom once again.

The Court further observed that it would be nothing short of cruelty and heartlessness to identify and release the bonded labourers merely to throw them at the mercy of existing social and economic system which denied to them even the basic necessities of life such as food, shelter and clothing. The simplest and plainest requirement of Articles 21 and 23 are that bonded labourers must be identified and released, and when they are so released, they must be suitably rehabilitated. The court said that social action groups working at grass root levels must also be involved because discovery of existence of bonded labourers and their ultimate release is feasible only by working amongst the poor.

It is humbly submitted that Neerja Chaudhry’s case demonstrates the contrast between the activist approach of the Court and the passive approach of the State in solving the

95. Supra note 96, at p. 1100.
96. Ibid., at p. 1106
problems of the bonded labourers. On the one hand, the Court has gone to the extent of setting in motion merely on receipt of a 'letter', whereas the State is not even stirred by the decision of the Supreme Court or provisions of legislation. 97

Again in Mukesh Advani v State of M.P., Court was set in motion by a letter received from Mr. Mukesh Advani, an Advocate by profession. Annexed to said letter was a cutting from Indian Express, dated September 14, 1982, which indicated the existence of bonded labour in stone quarries at Raison in Madhya Pradesh. It was alleged that the contractors operating mines recruited labour from Tamil Nadu, and they were given advance Rs. 1,000/- before bringing to work which was said to be reimbursable by deductions from wages in installments spread over months. But in fact the debt of Rs. 1,000/- was so manipulated that it never wiped out and on the contrary it increased by geometrical proportion resulting in bondage of labourers. Besides, there were allegations of existence of inhuman working conditions, no minimum wages, no holidays, longer working hours, no sanitary conditions, no wages during rainy season when the operations of mines was shut off, no workmen could leave until the entire debt was paid off, and not a single welfare legislation was enforced. It was reported that some workmen were under a debt of Rs. 16,000/-. It was alleged further that Labour Departments of both, Center and State, if not their active collaboration, but still out of their inaction, were helping in exploitation of labour.

97. AIR 1985 SC 1363.
The Court gave directions to the District Judge and Deputy Commissioner of Bhopal to proceed to the site of stone quarries at Raisen and ascertain the existence of bonded labourers. But, because of publicity in the newspapers with regard to the inquiry by the District Judge and also because of the efforts on the part of police of Madhya Pradesh, the contractors released the bonded labourers even before the Commissioner reached the site. But since it was reported that labour laws with respect to minimum wages, hours of work, payment of wages were not being followed accordingly, the Supreme Court directed the Government to arrange for their enforcement.

In Azad Rickshaw Pullers Union, Amritsir v State of Punjab, the Punjab Cycle Rickshaw (Regulation of Rickshaws) Act, 1976 was challenged since it sought to impose a ban on non-owner Rickshaw drivers. The Act had the objective of elimination of exploitation of rickshaw pullers by themiddlemen, and for giving a fillip to the scheme of government for arranging interest free loans for actual pullers to enable them to purchase their own rickshaws. But in effect, the Act was affecting the poor rickshaw pullers, who due to their poverty could not own a rickshaw. The Supreme Court, instead of deciding the constitutionality of the Act, sought to set out terms and conditions for implementing the scheme under the Act. The Court made certain banks to agree to advance loans to rickshaw pullers for the purchase of rickshaws

which would have been hypothecated to bank and loan would have repaid in easy installments.

In *P. Sivaswamy v State of Andhra Pradesh*, in 1982 a Public Interest Litigation was filed drawing the attention of the Supreme Court to the prevalence of bonded labour in stone quarries in several districts of Andhra Pradesh. Between the period from, January 25, 1983 to May 11, 1988, the Supreme Court issued several directions for providing relief to the bonded labourers. As a result of the judicial initiatives, about 2,000 of bonded labourers were identified in the stone quarries in several districts of Andhra Pradesh. The State Government informed the court that 1417 persons thus freed from bondage were repatriated to their respective states of Tamil Nadu, Orissa and Karnataka. But these State governments had failed to rehabilitate them despite several reminders served by the Court from time to time. Justice R.N. Mishra, expressed his deep anguish over the ineffectiveness of Bonded Labour System (Abolition) Act, 1976 despite several judicial initiatives taken from time to time to liberate and rehabilitate the bonded labourers. He recalled the observation of Leo Tolstoy, "The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did, but only the words were abolished, not the thing."

The Court observed that the society envisaged under the


Constitutional set up could no more take bonded labour as a part of it. It was, therefore, a conscious obligation of every employer not to take advantage of the economic disability of a brother citizen and force him into the system of bonded labour. It was observed that the state, employers and citizens have a duty to actively cooperate in the rehabilitation of the released bonded labour. Laws, however beneficial they may be, are difficult to be implemented unless the requisite social consciousness has grown. The Court warned that in the event of continued failure or non-compliance of judicial directions by the Karnataka government, the matter will be strictly viewed. The Court admitted that the statutory declaration of 1976 laying down that 'bonded system shall stand abolished' would remain a teasing illusion unless every employer cooperated in bringing about the abolition of the system by not exploiting the poor labourers for his own personal ends.

Again, in Balram v State of M.P., further directions were given for compliance by December 7, 1989, as Commissioner's report indicated that proper attention had not been bestowed on rehabilitation of bonded labourers who had been released through the Court. The rehabilitation scheme contemplated provision for Rs. 6,250/- for each of the adult freed bonded Labourers. Albeit, persons had been freed for more than two years, under the court's
order, in the absence of appropriate rehabilitation, they had found it difficult to sustain themselves and if this position continued for long they would naturally return to bondage again. Therefore, the court directed Union of India to release adequate funds under the Scheme to meet its liability under the Scheme framed under the Bonded Labour System (Abolition) Act, 1976 within four weeks to enable compliance of the directions made. The Court even kept the case open to monitor compliance in future also.

It is humbly submitted that even in long forty one years under the Constitution, an appropriate attitude and disposition to live amicably, equally in the polity is not generated. Instead of appropriate consciousness, there are contra-indications. Statute casts duty on the State to implement the provisions of the Act, but there is lack of responsiveness. Therefore, it becomes very difficult for the court to entertain repeated complaints of 'existence of bonded labourers' or 'non-implementation of court's orders to rehabilitate freed bonded Labourers. The Court cannot devote so much time in monitoring the administration of the Labour laws, the Court cannot continually monitor implementation of its order. There is a need of responsibility sharing on the part of the State.

Lately, in Workers of M/S Rohtas Ltd. v M/S Rohtas Industries Ltd., the workmen of Rohtas Industries Limited

102. 1989 (2) SCALE 173.
situated at Dalmianagar in District Rohtas within the State of Bihar, sent a letter addressed to Hon'ble chief Justice of the Court on July 8, 1985, alleging that the Company had four units namely, paper and boards, cement, asbestos and vegetable ghee plant, and the management had closed down the Industries with effect from September 8, 1984, with the result about 10,000 workmen were rendered jobless. They prayed that there should be immediate restoration of electricity to the colony, payment of salary and wages for the period since closure should be directed and compensated as per the amendment of the Industrial Disputes Act in 1984, and dues under the provident fund account, gratuity etc., should also be directed to be paid. The court entertained the letter as writ petition and issued directions accordingly. Since the State Government of Bihar had undertaken before the court to deposit the sum of Rs. 15 crores with the Administrator the court directed that similar amount shall be paid by Union of India to the State of Bihar from out of plan assistance for the State. The sum of 15 Crores paid by the State Government shall be utilized in due course for payment of arrears of wages to the workmen and for disbursement of secured loans of financial institutions and other parties for which security of company's assets had been furnished. The Court ordered that the retrenched workers shall come back to work in phases. The first phase shall admit one thousand workers. The case was kept pending in the court.
D. ENVIRONMENTAL LAW

In the area of environmental law also the judiciary has played an activist role to protect the humanity against the adverse effects of environmental pollution and ecological imbalances. The reason is that the pollution problem threatens the very survival of human race. Article 48 A of Indian Constitution directs the State to endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51 A(g) enjoins upon every citizen, a fundamental duty to protect natural environment. There are also Pollution Control Acts, namely, the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and control of Pollution) Act, 1981. But despite these tall constitutional and statutory provisions, the Bhopal catastrophe is a sad occurring. Every day, the chemical industries are polluting the atmosphere due to gas leaks and discharge of wastes. The apex court is attempting to make the government and industrialists realism their duties towards citizens with regard to clean and pollution free environment to live in. It is understandable that industrialization is essential for development, but at the same time when industrialization has adverse effects upon the health of the people the apex court has to decide between 'development' Vs. 'right of citizens to pollution free environment'. The apex court is trying to reconcile between two equally important objectives of the nation - i.e., development and conservation of
The case of Rural Litigation and Entitlement Kendra, Dehradoon v State of U.P., a rural activist group filed a writ petition in the Supreme Court based on Article 21, 48 A, and others, to enjoin limestone quarrying that was causing irreparable damage to hillsides, villages and surrounding farmland in the Doon valley. It was alleged that mining operations in lime quarries of Mussorie hills had adverse impact on ecological balance. This case was first of its kind involving issues relating to environmental and ecological balance, and therefore the questions arising in consideration were of great significance to the citizenry of India. This case involved sharp conflict between 'development' on the one hand, and 'conservation of environment and ecological balance' on the other hand. The case demonstrated the need for reconciliation of the two competing equally important interests in the larger interests of the country.

The Court appointed Bhargava Committee, and the Government of India appointed a working group to inspect the mining operations of lime quarries mentioned in the writ petition. The court first banned the use of explosives, and later, based on the recommendations of the Committee, ordered the closing of almost all the quarries, and conditional renewal of leases for the rest.

of them. The Court, in addition, ordered land reclamation and employment programs, and leasing practices that would address the problems of those whose jobs or businesses were disrupted by the closures. The decision affirmed the "right of the people to healthy environment with minimal disturbance of ecological balance and without avoidable harm to them."

This case shows the concern of the Court for the health and environment of the people who are not even parties to the writ petition. This case is a demonstration of readiness on the part of the court to intervene in the matters which hitherto have been forbidden areas for the courts in India.

In M.C. Mehta v Union of India and Sri Ram Foods & Fertilizer v Union of India, a writ petition was brought by way of Public Interest Litigation and raised some seminal questions concerning the true scope of Articles 21 and 32 of Indian Constitution, the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability should be quantified and whether such large enterprise should be allowed to continue to function in thickly populated areas and if they are permitted to function, what measures should be taken for the purpose of reducing to a minimum the hazard of

104. Supra note 103, at p. 696.
105. AIR 1987 SC 965. Popularly known as Oleum Gas Leak case or Shriram Foods Fertilizer (D.C.M.) case.
workmen and the community living in the neighborhood. In Oleum Gas Leak case, the leakage of Oleum gas from one of the units of Shri Ram Foods and Fertilizers on December 4, 1985, exhorted the District Magistrate, Delhi to pass an order under Section 133(1), Criminal Procedure Code, directing and requiring Shri Ram Fertilizers to cease the manufacturing and processing of hazardous and lethal chemicals and gases including chlorine, oleum, phosphate, etc., at their establishments in Delhi. On December 7, 1985, the inspector of factories in exercise of his power under Section 40(2) of Factories Act, 1948, prohibited the use of caustic soda and chlorine plants till adequate safety measures were adopted and imminent danger to human life was eliminated. Now, after taking all the possible safety measures recommended by different expert committees, Shri Ram Fertilizers petitioned for the reopening of the closed plants. The petitioner appeared personally in Public Interest Litigation and opposed the reopening of the plants. The court had to decide between the two conflicting interests. On the one hand, if the plants were permanently shut down, workmen numbering 4,000 would be without job, chlorine would not be available for Delhi Water Supply Undertaking and there would be shortage in supply of down the stream products. On the other hand, there was a risk of leakage which could harm the health of workmen and persons living in neighborhood.

106. Supra note 105, at p. 966
The Court, after properly weighing both the competing considerations ordered for the reopening of the caustic and chlorine plant temporarily pending the decision on the question as to whether to shift the plant to outside areas or not, and laid down strict conditions to be complied with by the Management. The Court observed:

"It is also necessary to point that science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of danger or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can not possibly adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy was adopted, it would mean the end of all progress and development. Such industries even if hazardous have to be set up since they are essential for economic development and advancement of well-being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk or danger to the community and maximizing safety requirements in such industries. We would, therefore, like to impress upon the Government of India to evolve a national policy for location of chemical and other
hazardous Industries in areas where there is little
danger or risk to the community, and when hazardous
Industries are located in such areas care must be taken
to see that large human habitation does not grow around
them. There should preferably be given belt of 1 to 5
Km. width around such hazardous Industries."

The Supreme Court appreciated and praised the petitioner
for rendering signal services to the community by bringing this
Public Interest Litigation and directed that a sum of Rs.10,000/-
be paid by Shri Ram to petitioner by way of costs.

This case opened a new vistas in the environmental laws.
The Court not only laid down strict conditions to be followed by
Shriram Fertilizers but also gave recommendations regarding a
national environmental policy for general supervision over the
hazardous chemical industries. It is a positive step towards the
maintenance of environmental balance. On top of it the Court gave
to the petitioner Rs. 10,000/- by way of costs, to be paid by
Shriram Fertilizers.

In Bhopal Gas Leak Case, on 2nd and 3rd day of December,
1984, there was leakage of Methyl Isocynate (MIC) from Union

107.Supra note 105; at p. 981. For stringent conditions laid
down by the court, See pp. 978-980.

108.Ibid., at p. 982.

Also See India Today, march 15, 1989, p.45.
Carbide Co. Ltd. of India at Bhopal, causing death of more than 3,000 people and about 2,00,000 people suffered from after-effects of MIC and other toxic gases. It proved to be most devastating of all Industrial accidents. In order to obtain compensation from Union Carbide Corporation and establish liability for the escape of hazardous and inherently dangerous toxic gases, 3500 civil and criminal cases were filed in Bhopal. Besides this, nearly 100 cases were filed in Newyork on behalf of the victims of Bhopal Gas Leak disaster. In order to confer certain powers on the Central Government to secure the claims arising out of or connected with the Bhopal Gas Leak disaster speedily, effectively, equitably and to the best advantage of the claimants and for the matters incidental thereto the Parliament enacted Bhopal Gas Leak Disaster (Processing of claims) Act, 1985, which came into force on March 29, 1985. The Act consolidated all claims relating to Bhopal Gas Leak Disaster and conferred on the Central Government exclusive right to institute suit or other proceedings in or before any court or 110 other authority or enter into a compromise.

It is important to first refer to M.C. Mehta v Union of India, the second decision, in which the Supreme Court evolved a new principle of strict and absolute liability in respect of hazardous or inherently dangerous industry. The Supreme Court

110. Section 2(a) and (b).
111. AIR 1987 SC 1086.
showed 'judicial valor' which is appreciable. Ex C.J. P.N. Bhagwati observed:

"We cannot allow our Judicial thinking to be conscripted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever sources it comes but we have to build up our own Jurisprudence and we cannot countenance an argument that merely because the new law does not recognize the rule of strict and absolute liability or the rule as laid down in Rylands V Fletcher as it developed in England recognizes certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done."

Ex C.J. P.N. Bhagwati further observed:

"We are of the view than an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature

112. Supra note 111, at p. 1099."
of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standard of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm, the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity.

Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands.
V Fletcher."

And after having evolved the new principle of strict and absolute liability, the Supreme Court went one more step ahead in determining a yet another new principle of the award of quantum of damages in such cases. Ex C.J. P.N. Bhagwati observed:

"the measure of compensation in the kind of cases referred in the proceeding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in carrying on of the hazardous or inherently dangerous activity of the enterprise."

But it is very sad that after having enunciated the new principle of strict liability and the principle of the measure of compensation on the basis of magnitude and capacity of the enterprise so as to have deterrent effect, the Supreme Court in Bhopal Gas Leak case brought about an abrupt end totally ignoring the vital issue involved. The court did not even look to it's own verdict in Shriram case. The Court is yet to consider the validity of Bhopal Gas Leak Disaster (Processing of claims)

113. Supra note 111, at p. 1099, Emphasis added.
114. Ibid., at p. 1099-1100, Emphasis added.
Act, 1985, albeit the petition with respect to this was pending for a year. The got caught in the strategy of the Government which took the plea in American Court that India’s Court system lacks the procedural and practical capability to handle this litigation. The Judgment is totally in contrast to the decision of the Supreme Court in M.C.Mehta case in respect of principle of strict and absolute liability, and the principle of measure of damages 'correlated to the magnitude and capacity of the enterprise' having a 'deterrent effect'. The award of 470 million U.S. Dollar (Nearly Rs. 715 crores) is neither adequate nor correlated to the magnitude and capacity of the Union Carbide much less having any sort of deterrent effect. The judgment is neither 'equitable', nor 'to the best advantage of the claimants', and is totally contrary to the all principles of criminal jurisprudence as it quashed all criminal proceedings relating to Bhopal Gas Leak Disaster. As against the judgment

the Supreme Court, Public Interest Groups have filed Review petition which is still pending before the Court. But the way it is still dealing with the pending litigation, it doesn't appear that Bench is likely to augment its image which is sagging very low at present.

In Bhopal Gas leak case, the role played by the Government is condemned and criticized because firstly, it went to a foreign country court and argued that its own judiciary was incompetent and inefficient and lacked procedural as well as practical capability to deal with this litigation; secondly, the government waited for Union Carbide to give compensation whereas it should have itself given proper and adequate relief to the victims immediately; thirdly, the government had filed a claim for compensation and damages to the tune of Rs. 3990 crores, but it later entered into compromise with the Union Carbide and accepted only 715 crores. Being the trustee of the victims, it was its duty to settle the claims 'to the best advantage of the claimants'. The government did not take the advantage of principle enunciated in Shri ram case, instead it betrayed the confidence of the victim; fourthly, the government had taken the stand throughout the proceedings that the most important issue in the case was the 'liability of multinational enterprise', while later it totally ignored this and other vital issues; fifthly, since India is the leader of non-aligned Countries, naturally the third world countries were looking towards it for its role in the development of new human right jurisprudence. But to the
disappointment of all, the government neither assisted the apex court in developing human rights jurisprudence, nor the principle of multi-national enterprise liability, rather it nipped in the bud the chance of a new development in human rights law.

But Bhopal disaster shook the lethargy of everyone and triggered off a new wave of consciousness and every Government became literally alert to the necessity of examining whether industries employing hazardous technology and producing dangerous commodities were equipped with proper and adequate safety and pollution control devices, and whether they posed any danger to the workmen and the community living around them. Ex C.J. Sabyasachi Mukharji, speaking for himself and on behalf of Justice K.N. Saikia, observed:

"The Bhopal Gas Leak disaster and aftermath of that emphasize the need for laying down certain norms and standards that the Government to follow before granting permissions or licenses for the running of industries dealing with materials which are of dangerous potentialities. The Government should, therefore, examine or have the problem examined by an expert committee as to what should be the conditions on which future licences and /or permission for running industries on Indian soil would be granted and for ensuring enforcement of those conditions, sufficient safety measures should be formulated and scheme of enforcement indicated. The Government should insist as a condition precedent to the grant of such licences
or permissions, creation of a fund in case of leakages or damages in case of accident or disaster flowing from negligent working of such industrial operations or failure to ensure measures preventing such occurrence. The Government should also ensure that the parties must agree to abide to pay such damages out of the said damages by procedure separately evolved for computation and payment of damages without exposing the victims or sufferers of the negligent act to the long and delayed procedure. Special procedure must be provided for and the industries must agree as a condition for the grant of license to abide by such procedure or to abide by statutory arbitration. The basis of damages in case of leakages and accident should also be statutorily fixed taking into consideration the nature of damages inflicted, the consequences thereof and the ability and capacity of the parties to pay. Such should also provide for deterrent or punitive damages, the basis for which should be formulated by a proper expert committee or by the Government....This is vital for the future."

The decisions of the Supreme Court have really awakened the people to be conscious of protecting their environmental rights. The Supreme Court admitted a writ petition under Article 32 filed

116. Supra note 109, at p.585-586.
by public spirited man of Tehri Garhwal and Uttarkashi against the U.P. Government's decision to construct Tehri Dam on Bhagirithi as arbitrary, unreasonable and destructive of lives and property of thousands of residents of Tehri Garhwal, Rishikesh and other areas down stream. The petitioners placed before the court scientific evidence regarding the vulnerability of rocks and metamorphic formation of these hills and showed that Tehri dam will fall due to reservoir induced earthquakes. It was apprehended that reservoir may topple down due to major land slide as major landslides were present along side Bhagirithi. The petitioners also presented the opinions of the scientists, engineers and geological experts while opposing the construction of the dam. The petitioners alleged that if the dam breaks it will wipe away large number of people right upto West Bengal. They pleaded that the land to be submerged by Tehri Dam was the only flat and productive land in the hills, and to sink such land permanently in dam shall be permanent loss to the nation. Besides, the world experience also shows that construction of such artificial reservoirs affect the animal bird and plant life and spread diseases.

Coming back to *M.C. Mehta (I) v Union of India*, a Public Interest Litigation was brought to enforce citizen's fundamental right to a clean and hygienic environment which was being violated by the pollution of river Ganga. The Supreme Court issued directions with regard to the industries in which the business of tanning was carried on at Jajmau, near Kanpur, on the bank of river Ganga, restraining them to throw the trade affluents and sewage into the river without appropriately treating them before such discharge. In *M.C. Mehta (II) v Union of India*, the Supreme Court took up the case of Kanpur Nagar Mahapalika. The court held the mahapalika responsible for the pollution of river Ganga near Kanpur city, and thus directed it to submit its proposal for effective prevention and control of water pollution within six months to the board constituted under the *Water (Prevention and Control of Pollution) Act, 1974*. The Court also directed the mahapalika to get the dairies shifted to a place outside the city or arrange for the removal of wastes accumulated at the dairies, to lay sewerage line and to increase the size of existing sewers in labour colonies, to construct public latrines and urinals for the use of poor people free of charge, to ensure that dead bodies or half-burnt bodies were not thrown in Ganga, to take action against industries responsible

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120. (1988) 1 SCC 471.
for pollution and to deny licences to new industries.

The observed that many provisions of the pollution prevention laws had just remained on paper without any action being taken by the authorities, and on account of the failure to obey the statutory duties for several years, the water of river Ganga had become so polluted that it could no longer be used either for drinking nor for bathing. The Court expressed it's anguish over this state of affairs. With respect to the maintainability of Public Interest Litigation, the court observed:

"The nuisance caused by the pollution of river Ganga is a public nuisance, which is widespread in range and indiscriminate in it's effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large."

Accordingly, a member of the public could bring a Public Interest Litigation under Article 32 for the prevention of public injury caused by environmental pollution. The Court taking keen interest in the preservation of environment advised the Central Government to direct all educational institutions throughout the territory of India to teach lessons on environment protection. The Court even suggested that text books should be written for the said purpose at the expense of Central Government and be

121.Supra note 119, at p. 489-490.
122.Ibid.
distributed free of cost to the students. The Court recommended the Central and State Governments to organize Nagar Nirmalikaran Saptaha, Gram Nirmalikaran Saptah in every city, town and village once a year.

Public Interest Litigation to protect the environment is entertained by the High Courts also, as in Kinkri Devi v State of Himachal Pradesh, the petitioners sought judicial intervention for the cancellation of mining leases for the excavation of limestone from the hills. The Court criticizing the act of the Government in granting of mining leases to the contractors without any regard to the life, liberty and property of the people residing in the area, issued several directions to the state government for protecting "Shivalik Hills" in Sirmaur District from indiscriminate blasting for extracting the limestone. The Court directed the state to take preventive, remedial and curative measures to protect and preserve ecological balance and prevent indiscriminate mining operations in the state.

Court said, if necessary steps were not taken by the state to protect the environment, it would violate fundamental rights of the people under Articles 14 and 21. The Court said that the state should not forget it's Constitutional obligation under Articles 51-A (g) and 48-A, to improve the environment and to

123. AIR 1988 HP 4
protect and preserve forests, the flora and fauna, the rivers and the lakes and all other water resources of the country.

Then in *L.K. Koolwal v State of Rajasthan*, the Court interpreted Article 51-A as conferring a constitutional right to the citizens to approach the courts for the enforcement of the duty cast on the state to protect environment. Justice D.L. Mehta gave following reasoning in allowing L.K. Koolwal to file a Public Interest Litigation in the High Court on behalf of the citizens of Jaipur praying for a direction to Jaipur Municipal Corporation to clean the city of Jaipur:

"We can call Article 51-A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move the Court to see that the State performs it’s duties faithfully and the obligatory and primary duties are performed in accordance with the laws of the land. Omissions or commissions are brought to the notice of the Court by the citizen and thus Article 51-A gives a right to the citizen to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, and local bodies..."

Thus, Rajasthan High Court has indeed given a altogether new interpretation by converting a ‘fundamental duty’ into a

124. AIR 1988 Raj. 2
125. *Ibid.*, at p. 4
'fundamental right' for the purposes of providing standing to a citizen to move the court for the enforcement of constitutional duty. The Court appointed a commission to investigate into the matter of sanitation of Jaipur. The report revealed that insanitation in many parts of the city was leading to a slow-poisoning and it was adversely affecting the life of the citizens. The Court, therefore, directed the Jaipur municipality to remove dirt, filth, etc., within a period of six months and clean the entire city of Jaipur.

Most important point in this case it that the Court ruled that maintenance of health, preservation of sanitation and environment fell within the purview of Article 21 of the Constitution. The executive have to fulfill this constitutional commitment and it could not be allowed to shrink it's responsibility on the ground of paucity of funds.

In Rural Litigation & Entitlement Kendra(II) v State of U.P., in a Public Interest Litigation, the Court dealt with the question relating the stoppage of mining operation in Doon Valley was that - whether procedural laws were applicable? In other words, whether order dated March 12, 1985 was a final order in regard to A-category mines. It was held that procedural laws do apply, but at the same time it has to be remembered that every technicality in the procedural law is not available as a defense when a matter of grave public importance is for consideration before the court.

126. JT 1988 (3) SC 787
Even it is said that there was a final order, in a dispute of this type, it would be difficult to entertain the plea of 'res judicata'. The Court said that in order to avoid multiplicity of suits in future and in the interests of the society, it would be proper to not leave the question open for examination but to decide the entire question. The Court observed that since continuance of mining operations affects the environment and ecology adversely and at the same time creates a prejudicial situation against the conservation of forests, it is therefore, necessary that each of the working mines should have to work with an undertaking given to the Monitoring Committee that all care and attention shall be bestowed to preserve ecological balance while carrying on mining operations, and 25% of the gross profits of the three mines shall be credited to the Fund Incharge of the Monitoring Committee to ensure maintenance of ecology and environment, as also reforestation in the area of mining by expending money from the fund. The Court appreciated the services of Mr. Pramod Dayal, a Member of the Bar of the Court, and directed the Union of India to pay him a sum of Rs. 5,000/- for the services rendered.

127. Supra note 125, at pp. 789-790.
128. Ibid., at p. 811.
129. Ibid., at p. 813.
In *Rural Litigation & Entitlement Kendra* (III) *v* State of U.P., an application was filed by a mining lessee in the Doon valley area, whose right to mining came to an end in view of the judgment of the Court on August 30, 1988. He applied for the review of the judgment on the grounds of justice, equity and compassion and prayed for permitting him to continue mining operations for a period of three months more. The court dismissed the same on the ground that allowing further mining in the area would not be in the environmental and ecological interest.

**E. MENTALLY SICK**

In a welfare state it is the obligation of the State to provide medical attention to every citizen. Running of mental hospital, therefore, is in the discharge of the State's obligation to the citizens, and the fact that lakhs of rupees have been spent from the public exchequer is not of any consequence. The State has to realize it's obligation and the Government of the day has got to perform it's duties by running the hospital in a perfect standard and serving the patients in an appropriate way.

Albeit, the Code of Civil Procedure, 1908, in Order XXXII lays down that once it is proved that a person, due to unsoundness of mind is unable to litigate, then his interests may

130. 1989 (2) SCALE 172.
be represented by a next friend, but the next friend under this provision can only protect the interests of mentally sick person, and not the interests of 'group' of mentally sick persons. The Public Interest Litigation strategy has now opened the doors for the 'group' representation of the interests of mentally sick persons.

The cases concerning mentally-sick persons fall under two categories, viz., i. the detention of the criminal and non-criminal mentally sick in jail even after they have regained their sanity; and ii. inhuman conditions in mental hospitals.

The cases filed under both the categories were agitated under Article 21 of the Constitution because confinement of sane person in jails on the ground of mental sickness was seen as an


infraction of right to life and personal liberty of detenus, which called for not only their release but also compensation. In 
Veena Sethi v State of Bihar, mentally sick under-trials were 
detained in jails for longer period than for which they could be 
convicted. The Court ordered the release of those who regained 
sanity. The petition did not however raise the question as to - 
how long a trial could be postponed due to unsoundness of mind.

Likewise, in cases wherein mentally sick were detained in 
mental hospitals, their detention could only be justified if they 
were provided proper living conditions and of course appropriate 
treatment also. Their detention in unhygienic conditions, with 
starvation diet, without any medicine, was clearly held to be 
violative of Article 21.

Albeit, Public Interest Litigation for mentally sick 
persons has been initiated by either lawyers or legal aid 
societies, but Trivandrum Mental Home Petition was taken up at 
the initiative of a poetess. The a relative of mentally sick 
person in a petition filed before the Bombay High Court 
questioned the treatment given to patients in Thane Mental Home. 
Acting on a Public Interest Litigation petition filed by Mr. H.A. 
Shukri, the Bombay High Court appointed a committee headed by Mr.

133. Supra note 131.

134. 617 Community Mental Health News 16 (January-June, 1987).

135. Ajit Pillai, "Mental Hospital Patients Tortured", Indian 
Post, February 12, 1989.
V.R. Mahajan, to look into the conditions in the Central Institute of Mental Hygiene and Research, Pune. The Court found that the conditions in the hospital were sub-human, devoid of basic amenities and unhygienic food. The treatment given hardly helped cure the patient. Thus, in December, 1989, the Court directed the state government to implement the committee's recommendations in all the four hospitals. The Government has said that it will need five years to implement all the recommendations. The Government has decided to set up a sophisticated mental health institute in Pune at a cost of Rs. 24.75 crores. It's main objective is to effect decentralisation of mental health services and their integration with primary health care. Another hospital which received adverse notice, recently, was the Ranchi Mental Hospital where about 100 patients died because of neglect. The National Institute of Mental Health and Neurological Sciences at Bangalore has won praise as a model institution.

In India, a surprising fact is that mental health professionals have not yet initiated nor intervened in these petitions, albeit they have aided in the actual implementation of court's directives. For instance, the Supreme Court acknowledged the services of a psychiatrist in R.C. Narayan v State of Bihar


137. 1988 (2) SCALE 965.
In this case a letter was addressed to the Chief Justice of the Court from two citizens of Patna in regard to the Mental Hospital at Kanke near Ranchi in Bihar state. The letter was treated as Public Interest Litigation under Article 32 of the Constitution. The Court called upon the Chief Judicial Magistrate of Ranchi or any other Judicial Magistrate nominated by him to visit the hospital and submit a report about the conditions prevailing in the Hospital. The Chief Judicial Magistrate found that — there was acute shortage of water in the hospital; none of the toilets within the Hospital complex was in order; for 1580 patients there were only 300 cots; none of the wards had doors and windows in working condition; the mattress and linen were in very bad shape, so several patients had to sleep on the bare floor, some of the patients were using single blanket as mattress and cover, some patients were naked in the absence of clothing and other were found wearing torn shirts; there were no mosquito nets with the result there were marks of bug biting and also mosquito biting on the body of the patients; in the absence of clothing the patients were forced to wear the same shirt and pant for four to six weeks without a wash on account of unavailability of water; there was no account of the stock of medicines; life-saving drugs were not stored properly in the absence of refrigerator. The said institution once upon a time used to enjoy international reputation and patients from outside India used to come for treatment. But the complaint and the subsequent report showed such deplorable conditions. The court directions and even suggested that the
institution be modelled after NIMHANS at Bangalore.

The services of voluntary group for the implementation of the Trivandrum Mental Home orders also deserve appreciation.

Public Interest Litigation cases demonstrating the detention of the cured mentally sick have resulted in their release. The Courts have even granted travel allowance for their returns to homes. Prison rules lay down provision for their regular medical check-up. The observance of this provision, in practice, has occurred only due to Court pressure.

The resultant of Public Interest Litigation is the substantial improvement of the conditions of those mental hospitals agitated before the courts. For instance, in Ranchi Mansik Arogyaashala case, resulted in the improvement of diet, physical atmosphere, and therapeutic facilities in the hospital. The budget for the food has been raised, and also the budget limitations for medicines have been lifted. The Court has asserted that it is not the financial considerations but the therapeutic needs of patients which should dictate the prescription of medicines to the patients. Besides, there is also improvement in water supply and sanitary facilities. Even gardens are now well maintained, thus improving the physical environment.

138. Supra note 134.

139. In Veena Sethi case, Supra note 131.
In B.R. Kapoor v Union of India, a very serious problem came to light that there were persons kept in the Shahdara Mental Hospital even after being discharged because they were disowned by their friends, relatives, so they had no-one to go to. The court directed for setting up of an 'after care home'. And now, it is due to the said directive of the court that such an 'after care home' is set up in Delhi. Then in S.R. Kapoor(II) v Union of India, Public Interest Litigation was filed in relation to the mismanagement of the Hospital for Mental Diseases located at Shahdara, an institution run and maintained by Delhi Administration. In February, 1984, the Court appointed a committee of experts to ascertain the prevailing ecological atmosphere, to make an assessment of the treatment given to the patients and also to look into certain specific allegations which had been made to the Court. The Court also requested the Committee to suggest remedial measures to improve the conditions as also explore rehabilitation programs and establishment of congenial atmosphere from the humanitarian point of view. On receipt of report, the Court directed the Delhi Administration to rectify the defects pointed out and attend to the aspects indicated by way of recommendations. The Delhi Administration was

141. AIR 1990 SC 752.
very slow in responding to the matter and about three years passed. The Court opined that the Mental Hospital should be run by the Union of India and not by Delhi Administration anymore, and it should be modelled on the lines of similar psychiatric speciality obtaining at institution run by NIMHANS at Bangalore. The Court recommended the Union of India to look into the matter with due care and concern, and hoped that perhaps with allocation of more funds a wider range of modern amenities and treatment facilities will be geared into with modern equipments and super-specialist talent can be made available so that when this large country would be marching into the twenty-first century, a modern well-equipped mental hospital - so indispensable to today's society - would be at the service of the nation at the country's hospital.

Then Trivandrum Mental Home Petition which demonstrated the atmosphere of the institution like that of a prison, wherein even basic humanity was denied to it's inmates. But due to Court's intervention, coupled with active participation of voluntary groups to seek implementation of court's directives, the conditions of the said institutions are improved.

**F. SLUMS**

In *Olga Tellis v Bombay Municipal Corporation*, the case

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142. *Supra note 134.*

143. *AIR 1986 SC 180.*
involved, on the one hand, the right of persons living in slums and on pavements for last 15-20 years as it was nearer to their place of employment and also they had no other place to go, on the other hand, the Municipal Corporation called them trespassers and tried to forcibly remove them and dismantle their hutments as these hutments were obstructions to free traffic and 'right of way' for the public. The problem was that if no action was taken, numerous health hazards and safety risks were likely to arise, and if action was taken, all the dwellers would have been rendered homeless. Thus, the Court was faced with equally competing claims of the pavement dwellers on the one hand, and of the pedestrians, on the other hand, and so the big question related to ensuring 'equality before law'. It was alleged that it was the responsibility of the Court to reduce inequalities and social imbalances by striking down statutes which perpetuate them. Petitioners contended that 'right to life' guaranteed by Article 21 includes 'right to livelihood' and since, they will be deprived of their 'livelihood' if they were evicted from their slum and pavement dwellings, their eviction amounted to deprivation of their life and is hence unconstitutional. Ex Chief Justice Chandrachud observed that the sweep of 'right to life' conferred by Article 21 was wide and far reaching and included 'right to livelihood' because no person can live without the 'means of living', in other words no person can live without the 'means of livelihood'. He reasoned that if the right to 'livelihood' was not treated as part of the constitutional right
to 'life', the easiest way of depriving a person of his right to 'life' would be to deprive him of his 'means of livelihood' to the point of abrogation. Such deprivation, the court observed, would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. However, the Court held that Constitution does not put an absolute embargo upon the deprivation of 'life' or 'personal liberty'. By virtue of Article 21, such deprivation has to be according to the 'procedure established by law'. In the instant case, there was the Bombay Municipal Corporation Act, 1988, and the provisions under the said Act empowered the Municipal Commissioner to remove the encroachments on the footpaths or pavements over which the public have a right to passage or access. The Court ruled that the 'procedure prescribed under the Act' for the purpose was not unreasonable, unfair or unjust. The Court laid down:

i. Footpaths or pavements are public properties, which are intended to serve the convenience of the general public. They are not laid for private use and their use for private purposes frustrate the very object for which they are carved out of the portions of public streets.

ii. The claims of pavement dwellers to put up constructions on pavements and that of the pedestrians to make use of pave-

144. Supra note 143, at p. 196.
145. Ibid., at p. 197.
ments for passing and repassing are not competing claims. No one has the right to make use of a public property for a private purpose without the requisite authorization. Pavement dwellers have no right to encroach upon pavements by constructing dwellings thereupon.

In Olga Tellis case, the Court protected the right of the pedestrians to the safety and security as against the right of pavement dwellers to livelihood. Both the rights carry equal weightage, but legally balance shifted in favour of pedestrians. It is humbly submitted that the Supreme Court ought to have insisted upon the State Government to provide those slum dwellers with alternative accommodations as nearer to the their site of employment as was possible. Providing them with accommodation miles away from their place of work was of no use to them as lot of time and money would have been spent on transportation, in a city like Bombay.

In Surat Municipal Corporation v Ramesh Chandra, the Court had to decide between the two conflicting claims, as on one hand there was a question of life and death of the hutment dwellers, in other words their right to exist, and on the other hand there was the question of uneconomic user of the plot by the plaintiff. The Court, unlike in Olga Tellis, preferred to protect

146. Supra note 143, at p. 198.
147. AIR 1986 Gujrat 50.
the lives of the vast majority of the poor people against the profits and comforts of a few individuals. In this case, the facts were that a private plot was surrounded on three sides by hutments though on public road. The existence of these hutments were devaluing the plot. The plot owner moved the trial court for the removal of hutments from the public roads. The trial court ordered the Municipality, despite their contentions that hutment dwellers have been living there for more than ten years, to remove the hutments. The Municipality appealed to the High Court against the decision of trial court. Madras High Court also stayed the Tamil Nadu Slum Clearance Board's proposal to evict a number of slum dwellers near Apollow Hospitals, who were mainly milk vendors, construction workers, cycle rickshaw pullers, etc., and resettle them some 35 Kms. from Madras city.

G. 'BASIC NEEDS'

The ideal of satisfaction of 'basic needs' of any human society is widely accepted, albeit in view of the stages of development and ideological preferences, there may be difference between one society and another on the issue of 'perception of basic needs', the 'priorities to basic human needs' and

'techniques deployed for securing them'. In recent times, basic human needs has started receiving attention of legal scholars who have started making more meaningful inquiries in the field of human rights, social justice, individual liberty, equality, etc. In this context the need for 'food' has acquired a distinct status. The present researcher here is confining to the basic need for 'food' only, and that too in relation to the specific weaker section like scheduled castes, tribals, landless labour, bonded labour, slum dwellers, women and children etc. This is in view of latest 'food petitions' filed before the Court.

In *Kishan Patnayak v State of Orissa*, Shri Kishan Patnayak and Shri Kapil Narayan Tiwari, the two social and political workers by a letter addressed to the Hon'ble Chief Justice of India, thus bringing to the notice of the Court the miserable conditions of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty.

It was alleged that the people of Kalahandi, in order to save themselves from starvation deaths, were compelled to subject themselves to distress sale of labor on a large scale resulting in exploitation of landless labors by the well to do landlords. It was further alleged that in view of distress sale of labour and paddy, the small peasants were deprived of the legitimate price of paddy and they somehow eke out their daily existence. Also their case was being victims of 'chill penury', the people of Kalahandi were sometimes forced to sell their children. It was prayed that the State Government should be directed to take immediate steps for the purpose of ameliorating the misery of the people of the district of Kalahandi.

This case was peculiar for many reasons. Firstly, it was a Public Interest Group Litigation in the real sense because it related to the interest of a substantially large number of population living in Kalahandi District. According to the officially admitted statistics relied upon by the Supreme Court, there were 2,72,000 inhabitants in Kalahandi district who survived on emergency feeding programs. Adding to this, the similarly situated population of Koraput district would raise the number to nearly four lakhs. Secondly, it was the first case in which cause of the 'poorest of the poor' sections belonging to the most ignored region of rural India was raised. In several earlier Public Interest Litigations, the issues relating to urban disadvantaged sections—such as the workers, the prisoners, the juveniles, etc., had come before the court, but never ever before
The "small man" of the least known regions of the country was made the focus of Public Interest Litigation. Thirdly, the case relates to 'basic human needs', particularly the needs of the fellow citizens. In a developing country like India, wherein the resources are indeed limited, the fundamental issues of 'survival' like 'basic needs' deserve a higher priority than other claims like 'human dignity', 'conditions of work', 'standard of hygiene' and 'environment' etc.

The issues raised in this 'food petition' are of most compelling and urgent concerns for any civilized human society. The facts of human beings facing the prospects of starvation death, distress sale of crops, labour and even their own children, and the helplessness of those who are unable to organize the minimum basic needs of life is a too grim a reality.

It is natural that one would expect the court to come out - on seeing the happenings narrated in the Kalahandi food petition - with an extraordinary response followed by a bold and humane consequential relief. But despite reasonably high spirited efforts on the part of the petitioners and others, the Supreme Court remained unmoved by the case. In fact the court did seem to appreciate the need for the petition and the logic of the petitioner's prayer. Apart from giving two directions to the government, one for constituting a broad-based district level Natural Calamities for Kalahandi, and the other for a similar Committee for Koraput, the Supreme Court turned back the
petitioners literally empty handed. There was no reference to the basic need involved in the famine and starvation conditions; nor any discussion about the legal or constitutional recognition of basic needs. The court incidentally accepted an obligation on the part of the state under the situation, but without clearly laying down the elements of such crucial obligation, went all out to establish that the obligation was fully disposed of, without bothering about the fact that unless there is administrative inaction, inefficiency or corruption there can be no widespread misery, sorrow and starvation in a particular region over a period of more than three years. The decision of the case is assailable on account of delay as justice is denied by inordinate delay, and pro-authority bias. The Court had put over-reliance on the administration's account of the situation.

Infact, 'basic needs claims' are an aspect of 'equality' occurring in Article 14 of the Constitution. The Article 14 guarantees 'equality before the law or the equal protection of the laws'. This mandate requires the government to treat similarly circumstances individuals in similar manner. The essence of this provision is that 'like persons shall be treated alike', but it does not guarantee equal treatment for all persons. The equality guarantee can be invoked in all cases of unequal access to certain 'basic needs' relating to food, shelter, health, care, education, etc. However, since the guarantee of equality permits reasonable classification amongst persons, the benefit of equality guarantee would however be
limited to the cases of arbitrary or unreasonable classification.

In United States, 'basic needs claims' can claim the foundation of equal protection clause. The equality clause, in United States, is used to claim a better distribution of medical care, education, social security benefits, etc.

Thus, right to 'basic needs' relating to food, clothing, shelter, health, etc., is recognized both in India and United States.

H. ACCIDENTS

The preservation of human life is of paramount importance because once life is lost it is not in the capacity of man to restore it. The patient, whether innocent person or a criminal liable for punishment under the laws of the society, imposes a duty on those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished.

In Pt. Parmanand Katara v Union of India, Justice Ranganath Misra observed that Article 21 casts the obligation on the State to preserve life. A doctor in a Government hospital is under State obligation, therefore duty bound to extend medical

150. JT 1989 (3) SC 496.
assistance for preserving life. For that matter, every doctor, whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of this paramount obligation upon the members of medical profession. He said that every doctor whereever he is within the territory of India, should be henceforth made aware of this position and, therefore this decision should be published in all journals and also adequate publicity should be given by national communication media as through Doordarshan and All India Radio.

In this case, the petitioner, a human right activist and fighting for the good cause for the general public interest, filed this petition under Article 32 of the Constitution, attached along with it a report published in the Hindustan Times entitled, "Law helps the injured to die". In the said report a scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road, picked up the injured and took him to the hospital. The doctors, however, refused to attend on the injured scooterist and told the man that he should take the patient to a named different hospital located some 20 kilometers away, which was authorized to handle medico legal cases. The man carried the victim, lost no time to approach the other named hospital but before he could reach, the victim succumbed to injuries. The petitioner, therefore, asked for direction to the Union of India that every injured citizen
brought for treatment should instantaneously be given medical aid to preserve life, and thereafter only the procedural criminal investigations should be allowed to operate in order to check negligent death, and in the event of breach of any direction, apart from any action that may be taken for negligence, appropriate compensation should be paid for.

Justice G.L. Oza observed:

"...there is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. There is also no doubt that the effort to save the person should be the top priority not only of the medical profession but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such incident or a situation. But on behalf of the medical profession there is one more apprehension which sometimes prevents a medical professional inspite of his desire to help the person, as he apprehends that he will be witness and may have to face the police interrogation which sometimes may need going to the police station repeatedly and waiting and also to be a witness in a court of law where also he apprehends that he may have to go on number of days and may have to wait for a long time and may have to face sometimes long unnecessary cross-examination which sometimes may even be humiliating for a man in the medical profession and in our opinion it is this apprehension
which prevents a medical profession who is not entrusted
with the duty of handling medico-legal cases to do the
needful, he always tries to avoid and even if approached
directs the person concerned to go to State hospital and
particularly to the person who is in charge of the medico-
legal cases."

He further observed:

"We therefore have no hesitation in assuring the persons
in the medical profession that these apprehensions,
even if have some foundation, should not prevent them from
discharging their duty as a medical professional to save a
human life...the police, the members of the legal profession,
our law courts and everyone concerned will also keep
in mind that a man in the medical profession should not be
unnecessarily harassed for the purpose of interrogation
or for any other formality and should not be dragged
during investigations at the police station and it should
be avoidable as far as possible. We also hope and trust
that our law courts will not summon a medical professional
to give evidence unless the evidence is necessary and even
if he is summoned, attempt should be made to see that the
men in this profession are not made to wait and waste time
unnecessarily."

151. Supra note 150, at pp. 497-498.

152. Ibid, at p. 498.
The men in the medical profession should not be subjected to unnecessary harassment either due to adjournments or cross examination so that it does not prevent them from discharging their duty to a suffering person who needs their assistance at the crucial time when he is fighting a battle between life and death. An accident victim must immediately be attended to by the Doctors, and for that Doctors should be left with no apprehensions as to their involvement and harassment in the medico-legal case. Doctors should be called upon by the law and it's instrumentalities when it is utmost essential in the interest of justice. They should not be deterred from discharging their prime duty of preservation of life.

I. RESERVATIONS

The first case in which the 'right to reservation' is urged by the members of backward classes as a matter of their right to equality is *P and T Scheduled Caste/Tribe Employees Welfare Association v Union of India*. The petitioners asked for a direction to compel the Government of India to provide them the benefit of reservation which they were enjoying earlier. They contended that the benefits of reservations for the SC/ST employees of posts and telegraphs department had been unreasonably withdrawn in a concealed way by introducing 'time-

bound one promotion' scheme, while others similarly situated in other departments were allowed to enjoy reservation in promotions.

Speaking through Justices E.S. Venkataramiah, S. Natarajan and N.D. Ojha, the Court ruled that ordinarily it was not open for the members of SCs/STs to move the court through an affirmative litigation to compel the government to provide reservations. The Court observed that the reservation clauses, Articles 15(4) or 16(4) were simply enabling provisions, and did not impose any duty on the government to provide reservations. But in the circumstances of the present case, where members belonging to SC and ST in the Posts and Telegraphs Department are deprived of indirectly the advantage of such reservation which they had been enjoying earlier while others similarly circumstanced in other departments are allowed the benefit of reservation, the action of the government is clearly discriminatory and thus invites intervention by the Court.

Accordingly, Article 16(4) is by itself not a fundamental right guaranteed to the backward classes to claim reservation as an aspect of right to equality. But in giving the benefit of reservation, the government cannot discriminate between the SCs and STs of one department with those working in other departments. In order to enjoy the benefits of reservation, the

154. Supra note 153, at p. 152.
members of SCs and STs have still to wait quietly and they cannot make use of affirmative litigation to force the government to provide them preferences. So the Court, in the instant case, issued a direction to the Union Government to provide some additional benefits to the SC/ST employees of Posts and Telegraphs department commensurate with similar advantages enjoyed by their counterparts in other departments. The government was given full discretion to choose any method for conferring some extra advantage to the petitioners.

It is humbly submitted that till the time 'reservation clauses', Articles 15(4) and 16(4), are taken as mere 'enabling provisions', in future there is little scope for the use of Public Interest Litigation in the area of compensatory discrimination.

J. EQUAL PAY FOR EQUAL WORK

Article 38(2) of the Indian Constitution obligates the State to strive to minimize the inequality in income, and endeavor to eliminate inequalities in status, facilities, and opportunities. And even if state cannot be compelled by court order to achieve social and economic equality, the government should not be allowed to take advantage of it's dominant position and compel any worker to work even as a casual labour on starvation wages. The state cannot deny at least the minimum pay scales of regularly employed workmen even though the state cannot
be compelled to extend all the benefits enjoyed by the regularly recruited employees. Such denial amounts to exploitation of labour and hostile discrimination.

The impact of Public Interest Litigation is seen most in cases where claims are raised for parity in wages. In *Daily Rated Casual Labour v Union of India*, the daily rated casual labourers in the posts and telegraphs department claimed wages in parity with regular employees. Justices E.S. Venkataramiah and S.Ranganathan observed that even if a directive principle may not be enforceable in a court of law, it could always be relied upon by a person to assert that he has been subjected to hostile discrimination. The Court directed the Government of India to pay wages to all the casual labourers in the posts and telegraphs department at the rate equivalent to the minimum pay in the scale of the regular workers in the corresponding cadre. The Court advised the Government to prepare a scheme for absorbing the casual labourers, who had been continuously working for more than one year in the said department. The Court said that there was no justification for keeping the persons as casual labourers for years. Justice Venkataramiah observed:

"The right to work, the right to free choice of employment, the right to just and favorable conditions --

155. (1988) 1 SCC 122."
of work, the right to protection against unemployment, the right of everyone who works to just and favorable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays withpay, the right to form trade unions, and the right to join trade unions of one's choice and right to security for work are some of the rights which have to be ensured by appropriate legislative and executive measures."

He urged the government to take adequate measures to improve the social and economic status of workers in all walks of life.

In *Jaipal v State of Haryana*, ten writ petitions under Article 32 were filed by the petitioners who were working as instructors under the adult and non-formal education scheme under the education department of Haryana. Petitioners alleged that they were not paid at par with the squad teachers under social education scheme of the department, despite similarities in their nature of work and qualification.

156. Supra note 155, at p.130.

Justices K.N. Singh and M.H.Kania reiterated the doctrine of 'equal pay for equal work' enunciated in Article 38 as concomitant of right to equality guaranteed by Article 14 of the Constitution. The Court allowed the instructors the same pay as sanctioned to squad teachers because both were employees of the same employer doing the work of similar nature in the same department. Therefore, the doctrine of 'equal pay for equal work' contained in Article 39(d) was applicable in this case. The Court opined that the above-stated doctrine could not be disregarded on the ground of one employment being temporary and the other being permanent in nature. Further, the Court observed, even the difference in the mode of selection ought not to affect the application of the doctrine if both classes of persons performed similar functions and duties under the same employer. Accordingly, the Government of Haryana was directed to fix the salary of the petitioners in the same pay scale as that of squad teachers.

However, in *Federation of All India Customs and Central Excise Stenographers v Union of India*, the petitioners, the personal assistants and stenographers attached to the heads of the department in the customs and central excise department of the Ministry of Finance moved the court under Article 32 praying for parity with the pay scales of the stenographers attached to

the joint secretaries and offices above that rank in the ministry. Ex C.J. R.S. Pathak and Ex C.J. S. Mukharji, qualified the doctrine of 'equal pay for equal work' by holding that equal pay depended upon the nature of the work done rather than on the volume of the work. The Court rejected the claim of the petitioners and held that in the instant case, the differentiation in the pay scales fixed for the stenographers grade I working in the central secretariat and those attached to the heads of the subordinate offices holding the same posts and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, was not violative of equality. The Court reasoned:

"One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration of fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination."

Accordingly, in this case the differentiation was held to be justified on the similarity of the functional work but on the dissimilarity of the responsibility, confidentiality and the relationship with the public. Therefore, petitioners were refused parity in the pay scales.

159. Supra note 158, at p. 100.
K. EXECUTIVE ACCOUNTABILITY

Public Interest Litigation can equally be utilized for prevention of abuse of power and maintenance of law. If injury was not caused to any specific individual, but to 'public interest', then any public spirited citizen acting bona fide and having sufficient interest can maintain an action. Even if the public spirited citizen is a politician, still he can go ahead to avoid public mischief and arbitrariness as advancement of 'public interest' is of paramount consideration in judicial function.

In D.N. Satyanarayan v N.T. Rama Rao, several writ petitions were filed under Article 226 before the High Court of Andhra Pradesh by a Congress (I) political worker alleging abuse of power, corruption, nepotism and fiscal crimes committed by Telugu Desam Chief Minister, N.T.Rama Rao. About 200 allegations were made by the petitioner against the Chief Minister. It was alleged that N.T. Rama Rao had indulged in several acts of immorality including political patronage, misappropriation of funds, deaths in police lock-ups, extermination of innocent people in false encounters and even the burning of the houses of tribals in the guise of containing the menace of the extremists. The intervention of the High Court was sought to remove the Chief

160. AIR 1988 AP 144.
Minister and the issuance of directions for the appointment of judicial commission, initiation of penal proceedings and imposition of President's rule in the State.

This case is a unique Public Interest Litigation entering the realm of 'executive accountability' for the annihilation of constitutional values.

Thus, the crucial question was—whether Public Interest Litigation could be initiated only for providing relief to the victimized or oppressed groups or it could equally be utilized for the avoidance of public mischief or violation of rule of law.

The Chief Minister opposed the petition on the ground that in the process of correcting executive errors, the court could not be allowed to enter into the political arenas on the policy decisions which were, by the Constitution, vested in the executive. He argued that Public Interest Litigation could be filed by only a public spirited person having no personal motive of any kind except either compassion for the weak and the disabled or deep concern for stopping serious public injury, but in this case, the petitioner was not a selfless citizen espousing the cause of the oppressed or the victimized but was an agent of the ruling party at the centre. He further argued that what could not be achieved by Congress (I) in the elections—that is of unseating the ruling Telugu Desam Party in Andhra Pradesh—could not be allowed to be achieved indirectly through the instrumentality of the court.

The Court, however, rejected all these contentions of the
Chief Minister relating to maintainability of the petition as Public Interest Litigation. A five-judge-bench held that the writ petitions could not be thrown out merely on the ground that they were filed by a political worker belonging to Congress (I). The Court, however, expressed it's inability to deal with so many issues raised by the petitioner and ruled that Public Interest Litigation should always be confined and limited to specific and pointed issues. Thus, Court selected only a few specific allegations and came to conclusion that the Chief Minister did abuse his power. The Court did not provide exactly the same relief as prayed for by the petitioner, instead it directed the petitioner to implead all the persons who were likely to be affected by the final orders to be passed in these proceedings.

In Aeltemesh Rein v Union of India, a practising advocate filed a petition under Article 32 praying for a direction to compel the Government to - i. implement the judgement in Prem Shanker v Delhi Administration, and ii. bring Section 30 of the Advocates Act, 1960, into force. As to point i., the petitioner alleged that the hand-cuffing of Delhi Advocate while he was being taken to the court of metropolitan magistrate, Delhi, was contrary to the law declared by the Supreme Court in Prem Shanker Shukla case. Accordingly, he prayed

for the issuance of directions to the Union of India and Delhi Administration to frame rules or guidelines in accordance with the norms of the above judgement.

As to point ii., it was argued that Section 30 of the Advocates Act was not brought into force even after a lapse of three decades enabling an advocate to practice throughout the territories to which the Act extended before the courts, tribunals and other authorities. Accordingly, a direction was sought to force the government to bring into effect the said provision of the Act. The Court directed the Union of India to frame rules or guidelines in accordance with the norms laid down in Prem Shanker Shukla case and to circulate them among all the states and the union territories within three months beginning from August 4, 1988. But the court refused to issue directions to the Government of India to bring Section 30 into force.

### I. COMMUNICATION MEDIA

In past not more than four years, there has arisen an unprecedented tendency to seek judicial verdict against the telecast of serial on 'communication media', i.e., on television, through the strategy of Public Interest Litigation.

When a film is showed on television, several factors — such as portrayal of setting, their behaviors, their expression, the use of 'effects' through lighting, setting, background music, etc. — largely determine the impact of the film on the audience.
It is not understandable how the complaints relating to screening of a serial on television as communication media are within the purview of judicial review under Articles 32 and 226 as violative of fundamental rights. It is the audience, rather than determination made by a few judges on viewing the serial, that can decide whether a particular dialogue or scene is prejudicial to fundamental rights or 'public interest'. Invariably judges have given a verdict in favor of televising the controversial serial.

In Ramesh v Union of India, the facts of the case were that one Javed Ahmed Siddiqui moved the Bombay High Court under Article 226 for a direction that the telecast of Television Serial Tamas be stopped as it would promote the feeling of enmity and hatred among the people, particularly in the new generation of Hindus and Muslims through the projection of communal riots and disturbances in the pre-partition days. Justices Lentin and Sujata Manohar saw the complete serial and found no merit in any of the objections raised by the petitioner. It was held that Tamas was an anatomy of the tragic period of partition and had depicted how communal violence, tension and hatred were generated by fundamentalists and extremists and both the communities learnt to live in amity. The petitioner moved a special leave petition before the Supreme Court.

A petition under Article 32 was also filed by an advocate practising in the Supreme Court praying for a direction to restrain the telecast of the serial Tamas on the ground of violation of rights under Articles 21 and 25 of the Indian Constitution. He alleged that the screening of the serial was also violative of Section 5-B(i) of the Cinematograph Act, 1952.

The Court decided against Public Interest petitioner and ruled that televising of Tamas did not violate anyone's right to life and personal liberty, nor did it violate the freedom of religion.

The Court held that any public spirited citizen could move the Supreme Court under Article 32 to ensure communal harmony in the country even though no one's fundamental right is violated by the screening of a serial on television. According to Court, televising of Tamas, did not violated any one's right to life and personal liberty or freedom of religion. Yet Public Interest Litigation could be utilised to draw the attention of the court to ensure that the communal atmosphere was kept clean and unpolluted.

Tamas case demonstrates a futile exercise in seeking judicial intervention in restraining Television authorities from telecasting a serial on the ground of injury to public interest by way of Public Interest Litigation. The Court is unwilling to interfere with the conclusion reached by Television authorities on the suitability of a film for public viewing. This position
was reiterated in *Odyssey Communication Pvt. Ltd. v Lok Vid-164 yavan Sanghatana*, wherein a Public Interest Litigation for a direction to stay the telecasting of serial *Honee Anhonee* was filed by two social action groups on the ground that in each episode already telecast shown an obscure and mysterious atmosphere was created due to the manner of presentation of the episodes and that this had created fear in the minds of the common viewers, especially children, because the serial had the effect of confirming beliefs in stories of ghosts, rebirth and precognition and they had the effect of spreading the unscientific way of thinking.

In this case, originally, Public Interest Litigation was filed in Bombay High Court under Article 226. The Court issued interim order of injunction not to show episodes 12 and 13 of the serial. Odyssey Communication Pvt. Ltd., the producer of the serial appealed before Supreme Court under Article 136.

The Supreme Court allowing the appeal held that the right of a citizen to exhibit films on Television was a part of the right to freedom of expression guaranteed under Article 19(1)(a) which could be curtailed only under circumstances set out in Article 19(2). The Court observed that this right was analogous to the right of a citizen to publish his views through any media.

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such as newspapers, magazines, advertisements hoardings etc. subject to the terms and conditions of the owners of the media.

In both the cases, Tamas case and Honee Anhonee case, the court did not find a violation of anyone's fundamental rights by the telecast of serial on Television. Justice Venkataramiah observed in Honee Anhonee that the objection related to spread of false and blind beliefs amongst members of the public, but the petitioners failed to assert any right conferred upon them by any statute or acquired by them under a contract which entitled them to secure an order of temporary injunction against which the appeal was filed. The Court criticised the issuance of interim order of injunction by the Bombay High Court restraining the showing of episodes 12 and 13 of the serial since there was no prima facie evidence of grave prejudice that was likely to cause to the public generally, by the exhibition of the serial. The exhibition of the serial was not likely to endanger public morality because at the end of the serial the superstition an blind faith in supernatural phenomenon was condemned and criticized.

Accordingly, in Public Interest Litigation cases against communication media, i.e., Television, did not involve legal issues for determination of constitutional liability or violation of fundamental rights of the victimised or oppressed groups. In these cases Public Interest Litigation was used to assert an injury to 'public interest' by the exhibition of a particular serial on Television.
In *Indira Jai Singh v Union of India*, an advocate of Bombay High Court filed Public Interest Litigation complaining the infringement of her fundamental right to free speech and expression by an action of Television authorities in completely deleting her comment on the topic of Muslim Women's Bill given by her in the programme entitled *Sach ki Parchhayian*. She alleged that her views which were recorded at the time of taking her interview were later deleted because they were against the views of the ruling party as she had said that Muslim Women's (Protection of Rights on Divorce) Bill, 1986 was unconstitutional and violative of the equality rights of women. She alleged that it amounted to clear imposition of censorship of her views in violation of Article 19(1)(a). She asked the Court for a determination of the basis on which programmes on Television should be scheduled, edited and censored, and sought declaration that by deleting her views the authorities had acted arbitrarily in violation of Article 14 of the Constitution. The Court held that Television authorities had violated her right to freedom of speech and expression, without any authority of law. The Court explained that Article 19(1)(a) protected freedom of speech for 'television' as much as anywhere else, and since no guidelines were laid down by the authorities and no reasonable restrictions

were imposed on the right of a citizen to express one's views on television, the executive action in this case was unconstitutional. Therefore, the Court directed the Televisions authorities to invite the petitioner to express her views on the Bill - which is now passed as an Act - if they decided in future to telecast a programme on such a topic.

M. CONTEMPT OF COURT

Can the Court initiate a contempt proceeding against a public spirited petitioner for denigrating the court in the esteem of the people of India? In the case of Chiran Lal Sahu v Union of India, this question was raised. The petitioner, Charan Lal Sahu criticized the court by way of Public Interest Litigation, and at one place the petitioner stated, "Thus the working of the judges are cocktail based on Western Common Laws and American techniques, as such unproductive and outdated according to socio-economic conditions of the country."

At another place the petitioner stated in the petition:
"This Court has become a constitutional liability without having control over the illegal acts of the government....Thus the people for whom the Constitution is

168. Ibid., at p. 256
meant have now turned down their faces against it which is a disillusionment for fear that justice is a will-o'-the wisp."

The court observed that the petition filed by the petitioner had unsavoury language against the judiciary and had indulged in intentional mud-slinging against the advocates, the Supreme Court and other constitutional institutions. At yet another place the petitioner had stated that the Supreme Court was sleeping over the issues like Kumbhakarna. On reading the entire petition the court concluded that the petitioner, an advocate practising in the Supreme Court, had acted in an irresponsible manner. The Court even went to the extent of initiating contempt proceeding against the public interest petitioner and held that the allegations stated in the petition amounted to contempt of court.

In Sheela Barse v Union of India, Sheela Barse, a freelance journalist prayed the Supreme Court for leave to withdraw her main Public Interest Litigation in 1986, which she had filed for espousing the cause of a large number of children suffering custodial restraints. She complained that the Supreme Court had become 'dysfunctional' in relation to and in the context of, the gravity of the violations of the rights of the children. She

169. Supra note 167.
complained that due to unjustified adjournments and the functional deficiencies of the procedure of the court, the proceedings initiated by her had not been finally disposed of. Accordingly, she argued that the failure of the court to exact prompt compliance with the judicial directions for the welfare of the children, entitled her to withdraw her petition. The Court refused to accept her prayer to withdraw her petition and held that a Public Interest petitioner cannot be allowed to criticize the court for delay on the basis of her/his own judgement about the standards of promptitude and dispatch of the judicial performance and the public accountability of the court. The Court said that such criticism amounted to contempt of court.

The freedom to criticize judiciary could not go to the extent of permitting a litigant to criticize the proceedings during the pendency. The Court observed:

"Indeed, while comments and criticisms of judicial functioning on matters of principle are healthy aids for introspection and improvement, the criticism of the functioning of the court in the course of and in relation to a particular proceeding by the parties to it borders on conduct intended or tending to impair the dignity, authority and functional disposition of court."

Accordingly, in Charan Lal Sahu case, when Charan Lal Sahu criticised the court by way of Public Interest Litigation, the

171. Supra note 170, at p. 242.
court decided to prosecute him for contempt. And when in Sheela Barse case, Sheela Barse criticized the court for delay and ineffectiveness in dealing with Public Interest cases, she was also met with a similar threat.

These critical comments in Charan Lal Sahu and Sheela Barse cases on the functioning of the court were, however, made in front of a few judges only. But in P.N. Duda v. P. Shiv Shanker, Shiv Shanker, the Union Law Minister, described the Supreme Court as haven for criminals, smugglers and anti-social elements, in his speech in a seminar addressed to a large audience. His remarks were not treated as denigrating the judiciary in the esteem of the people, even though an advocate practising in the Supreme Court urged the court to initiate contempt proceeding against P. Shiv Shanker, the then Law Minister for making a speech on 'Accountability of the Legislature, Executive and Judiciary under the Constitution of India' organised by Bar Council of Hyderabad in November, 1987. The minister described the Supreme Court as comprising of elite-class having unconcealed sympathy for the rich and the industrialists, and at one place he even said, "Anti-social elements i.e. FERA violators, bride burners and whole horde of reactionaries have found their haven in the Supreme Court."

172. Ibid., at p. 188.
The Supreme Court, however, refused to initiate a contempt proceeding against him. The Court reasoned that the said speech was made by the minister before a select audience and criticism of judiciary was permissible in a free society. On the reading the speech in its entirety, the court did not find it bringing the administration of justice into disrepute or impair the administration of justice. But the Court did remark that in some portions of the speech the language used could have been avoided by the minister who was having the background of being a former judge of the High Court.

Accordingly, it is abundantly clear that the judges are open to public criticism and public scrutiny and they can surely be asked to be accountable to the society. But one is not allowed to criticize the court in a Public Interest Litigation petition. The Criticism of the Court is permissible if it is on judicial functioning on matters of principle, but criticism of the functioning of the court 'in the course of and in relation to a particular proceeding' by the parties to it is not permissible.

N. CONCLUDING OBSERVATIONS

That the constitutional provisions in Articles 12-35 of the Indian Constitution specify fundamental rights of the citizenry of India. Article 21 declares right to life and personal liberty prescribing a mandate that no person shall be deprived of his life or personal liberty except according to
procedure established by law. The earlier stand taken by the Court in the Gopalan case was indeed a very narrow one. The state had merely to show that it's interference with individual liberty was according to procedure laid down by properly enacted law. Thus, any inconvenient Supreme Court decision on the constitutional validity of state action was simply overturned by amending the Constitution. However, for the first time, in Golak Nath case a doctrine that fundamental rights were inviolable, unimpeachable was laid. This notion was over-ruled, and replaced with the theory of 'basic structure' in Kesavananda Bharti case.

In 1978, Supreme Court breathed substantive life into Article 21 by subjecting state action interfering with life or liberty to a test of reasonableness. It required not only that procedures be authorised by law, but they they are right, just and fair, in Maneka Gandhi case.

This transformation paved way for a substantive reinterpretation of constitutional and legal guarantees and positive judicial intervention. By adopting a liberal reading of fundamental rights coupled with commitment to the social welfare

174. Supra note 6.
177. Supra note 1.
objectives of the Directive Principles, albeit non-enforceable, the Indian courts have sought to read substance into otherwise formal guarantees.

Accordingly, foregoing case-analysis has shown that by adopting a very liberal interpretation of provisions of Article 21 the higher judiciary in India is trying to made the fundamental rights a meaningful reality for the poor detenus and the convicts. Time and again the Indian Supreme Court has emphasized that Articles 14, 19 and 21 do not leave the prisoners at the jail gates, prison walls do not keep out of reach the availability of fundamental rights, but they are available to them as they are available to a 'free man'.

On several occasions, the court has criticized the administration of affairs in prisons, especially the causing of physical harm to the prisoners in the name of maintaining discipline. In this chapter of the study, the present researcher has shown that Courts - through it's various pronouncements - are touching practically all aspects of prison administration, whether it is 'prison justice'; 'bar fetters'; 'hand-cuffing'; right to 'life', 'human dignity' and 'livelihood'; 'execution of death sentence'; 'right to legal aid'; 'right to speedy trial; 'protection of women and children'; or the 'right of prisoner to get wages' for work services rendered while in prison. Courts are seeking to humanise the areas of prison administration emphasizing on the right of a prisoner to the integrity of his physical person and mental personality. The Court has brought
within the broad sweep of right to 'life' and 'personal liberty' contained in Article 21 of the Constitution, various 'new' rights as 'right to livelihood', 'human dignity', 'privacy', 'speedy trail', 'legal aid', 'wages for work done by prisoner while in prison', 'basic needs' for food, 'medical aid' to the person injured immediately after 'accident' to save his life. All these new rights are resultant of Public Interest Litigation cases filed before the Court. In all Public Interest petitions dealing with treatment of prisoners awaiting trials, the Court has found base in Article 21 for giving orders directing the State to take active steps to ensure effective remedies.

It is humbly submitted that in India, the Constitutionally based Public Interest Litigation is most of the times aimed not at challenging the validity of legislative measures, but is rather aimed at enforcing the already existing laws and thus forcing the public agencies to take steps to enhance the welfare of citizens. As for instance, in Olga Tellis case relating to the displacement of slum dwellers in Bombay city, the Supreme Court declared that positive action is required if the theory of 'equal protection of laws' has to take it's place in the struggle for equality. Court said that in these type of cases the need is not as much of governmental interference as it is for positive governmental action.

178. Supra note 143.
179. Ibid. at p. 203.
In the area of labour law in Bandhua Mukti Morcha case, Article 21 was said to include right to be 'free from exploitation' and it is said to include 'protection of health and strength' of workers, men and women. Article 21 protects the tender age of children against abuse, and it provides for an opportunity and facilities to develop the children in healthy manner and in conditions of freedom, dignity, educational facilities. Article 21 also provides for just and humane conditions for work and for maternity relief for women. Article 21 protects women and children especially against custodial violence. These all are minimum requirement which must be provided in order to enable a person to live with human dignity.

In the area of environmental law also Supreme Court accepted in M.C. Mehta case that environmental pollution and industrial hazards were not only potential civil torts, but also violation of fundamental rights, redressible directly by the Supreme Court through Public Interest Petitions. But the infringement of the right must be gross and patent on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially

180. Supra note 93.
181. Ibid., at p. 811-812.
182. Supra note 105.
or economically disadvantaged position to require such persons to initiate and pursue action in civil courts.

In M.C. Mehta case the court declined to determine whether or not the defendant was sufficiently under the governmental control to be an 'authority', and therefore susceptible to Constitutional control. Court took the opportunity to forge a 'doctrine of absolute liability' with respect to hazardous operations, unrestricted by the traditional qualifications and exceptions that have grown about the Common law rule in Rylands v. Fletcher. The Court reasoned that injuries to workers and others, caused even by necessary industrial work are part of the social cost of development and should not be borne by the victims. But it is very sad that in Bhopal Gas Leak case the Court did not made use of it's own verdict in applying the new principle of strict liability and the principle of the measure of compensation on the basis of magnitude and capacity of the enterprise so as to have a deterrent effect, and brought an abrupt end totally ignoring the vital issues involved. The Court had the opportunity to evolve a new human rights jurisprudence for all third world countries to follow, but the surprising the Court missed it.

Then Public Interest cases relating to 'mentally sick' whether in jail or mental hospitals, is another new area, in which court provided forum for agitation of their rights. But it

183. (1868) L.R. 3H.L. 330.
is to be noted that yet the agitation for the rights of mentally sick persons is being undertaken on a generalised basis. It is indeed a sad state of affairs that the peculiar physical and emotional needs of mentally sick persons have not yet been felt and that is the reason why Public Interest Litigation has not yet been strategically and fruitfully used to improve the inhuman conditions and their mental health. But it cannot be denied that Public Interest Litigation has taken a vital step of atleast bringing to the 'public scrutiny' the conditions of those mentally sick persons in jails or mental hospitals. It is definitely a step towards empowering them with basic human rights. The first step is taken, and now next step calls for an action by the mental health professionals, mental health activists, and ofcourse by friends of those mentally sick.

Satisfaction of 'basic needs' for food is an 'ideal' which must be achieved in all human societies. In Kalahandi Food Petitions the Supreme Court faced pitiable conditions of people of Kalahandi district, who were themselves dying of starvations and at times were forced to sell their own children. But, alas, no positive steps were taken for the purpose of amelioration of miseries of the poor people of Kalahandi by the State, and the Court also failed to fully appreciate the need and the logic for this Public Interest petition. The Court merely gave two empty directions without any reference to the 'basic needs' involved

184. Supra note 149.
in the famine and starvation conditions. The Court did not discuss the legal and Constitutional recognition of 'basic needs', but incidentally it accepted that there is an obligation on the part of the State under such situation. It is humbly submitted that the Court ought to have laid down the elements of such criminal obligations, and seen that obligation was fully carried into effect in reality.

Usually, in 'accident' cases, the doctors are apprehensive of their unnecessary involvement in long trials in courts due to wastage of their time in being 'witness' and subjected to 'cross-examination' during the course of litigation. So doctors, invariably, used to direct 'accidentally injured' persons to the one's assigned to take up medico-legal cases. The ruling in Public Interest petition filed in Pt. Parmanand Katara case has helped the accident victims to get immediate medical assistance. The Court ruled that the right to life and it's preservation is most important. Accordingly, all procedural formalities may be done after the injured person, who is fighting battle between life and death, is treated by doctor available. The Court even directed that this decision should be published in all journals and also adequate publicity should be given by national communication media through Television and All India Radio.

With respect to affirmative directions to compel the

185. Supra note 150.
government to provide 'reservations', the Court ruled in P & I Scheduled Caste/Tribe Employees Welfare Association case that members of SCs/STs could not do so as Articles 15(4) and 16(4) were merely 'enabling provisions'. These provisions do not impose any duty on the government to provide reservations. But a Public Interest petition will be entertained with respect to a case wherein members of SC/ST are discriminated indirectly of the advantage which they have been enjoying earlier, and others similarly circumstanced are still enjoying.

It is humbly submitted that until 'reservation clauses' in Articles 15(4) and 16(4) are taken as merely enabling provisions, there is very little scope in future for the use of Public Interest Litigation in this area of compensatory discrimination.

The right to 'equal pay for equal work' enumerated in Article 38 is interpreted as concomitant of right to equality in Article 14 of the Constitution in Public Interest Litigation in 186 JaiPal case. The doctrine of 'equal pay for equal work' can be applied even in cases where one employee is temporary and the other is permanent. So much so that difference in the mode of selection also does not affect the application of the doctrine if both the classes of persons performed similar functions and duties under the same employer.

Public Interest Litigation is also utilized for preventing

186. Supra note 157.
abuse of power and maintenance of law if the injury is caused to 'Public Interest' and not merely to any specific individual. Political executive is accountable, should he commit errors and take advantage of his position. Political workers cannot indulge in corruption, nepotism and fiscal crimes. Public Interest Litigation has now entered in the arena of 'executive accountability' for the annihilation of Constitutional values.

Yet another unprecedented development is the new tendency of seeking directions against 'communication media', i.e., Television, through Public Interest Litigation. For instance, in January, 1988, in response to Public Interest Litigation filed by Javed A. Siddiqui against the telecasting of controversial serial Tamas of Govind Nihalani, the Bombay High Court directed that the telecasting of the said serial be stopped on television. Besides, an advocate practising in the Supreme Court also filed Public Interest petition under Article 32 praying for direction restraining the telecast of the said serial. However, the Supreme Court decided against the Public Interest Petitioner. Another, Public Interest petition was filed against the telecasting of the serial Honne Anhonee in the High Court. Thereafter, All India Safai Mazdoor Union filed a suit in the district court of Chandigarh for an order to end the serial Ramayana because they alleged that the role of Maharshi Valmiki in bringing up Luv and Kush should also have been shown in order to complete the epic. Later on, when on public demand Uttar Ramayana was started, it's telecast was stayed because a former judge of the Allahabad High
Court petitioned against it in the Allahabad High Court. The Supreme Court appointed an expert committee to find whether Television was telecasting the correct version of Ramayana in serial Uttar Ramayana. The Court even asked Union Government to 'authenticate' the serials like Mahabharat and Uttar Ramayana to avoid any distortions.

But it is to be noted that in almost all these cases the judges have given verdict in favour of telecasting the disputed serials.

'Contempt' proceedings can be initiated by the Court against Public Interest petitioner, should he/she indulge in criticism of court and its functioning during the pendency of and in relation to, a particular proceeding in which he/she is a party. But it is to be noted that if criticism of judges is on judicial functioning on matters of principle, then such criticism is allowed.

It is humbly submitted that in final analysis, in India, the true measure of judicial activism is found less in the rhetoric of rights definition than in the 'remedial strategies' and actual outcomes in Public Interest cases.

187. The Times of India (New Delhi), June 20, 1989.