VI) Representative Suits in Substantive areas of law In India:

A) "Numerous Persons," "Same Interest" and Categories of Representative Suits:

As pointed out earlier, numerous persons having the same interest is a *sine qua non* of the representative suits. Due to the amendment of the Order in 1976, the Explanation makes it clear that for the purpose of determining whether the persons who sue or are sued have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action. Of course, the person who has no right of suit on behalf of himself (locus standi) cannot be allowed to sue in a representative capacity. In other words, Order 1, Rule 8 does not create a right to sue when there is none. But it is an "enabling provision" which allows one person to represent others when they have same interest in one suit.

Courts have given liberal interpretation to the term "numerous persons." It has been held that it is not necessary that the number should be capable of ascertainment. Thus a suit is maintainable even on behalf of a fluctuating body.
like Town people, Village people, Community of people belonging to a particular caste or religion, Worshippers at a mosque or a temple, Rate payers of a town, a Defined community etc. It is necessary, however, that body of persons represented must be sufficiently definite for the court to be able to recognize the participants in the suit. Thus, a suit is not maintenable on behalf of the public in general.

There can be no hard and fast rule as to how many persons should represent the class. The court can grant permission even to a single person to bring a suit in a representative capacity.

Coming to the expression "same interest," as pointed out earlier, it is on the interpretation of these terms that the scope of representative suits is going to depend. It has been held that the expression "same interest" covers cases where the interest is similar though distinct. The rule is designed to allow one or more persons to represent a class having the same special interests but not to allow such persons to sue on behalf of the general public. It is not a condition precedent to a suit under Order 1, Rule 8 that the consent of the community should be obtained.
before hand for the suit. If a substantial majority of the members of a body are of one opinion, an order may be made by the Court giving permission under this rule, though there is a small or negligible minority holding a different opinion. In a recent decision the Supreme Court of India remarked:

"The provisions of Order 1, Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. The object for which 0.1, R.8 is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction". The court further observed:

"It is true that each of the allottees (of Housing Board) is interested individually in fighting out the demand separately made or going to be made on him and, thus, separate causes of
action arise in the case, but, that does not make 0.1, R.8 inapplicable. Earlier there was some doubt about the Rule covering such a case which now stands clarified by the Explanation introduced by the Code of Civil Procedure (Amendment) Act, 1976.”

The facts of this case are discussed later.

B) Representative Suits in Substantive areas of law:

Categories of Cases.

Following are the fact patterns in which representative suits have been successfully filed in India. From the reported cases of the High Courts and Supreme Court I have made an attempt to create as many divisions as possible indicating the different areas of law in which this device has been used.

(1) Suits to enforce religious rights or rights of people belonging to a particular caste or community:

The worshippers at a temple can sue to set aside an alienation of temple property. Thus, ten plaintiffs belonging to the community of "Lingayats" sued in a representative capacity as devotees for possession of the properties belonging to the trust. The suit was against alienation of the temple property alleging that the alienation
is not binding on the deity. The suit was decided in favour of the plaintiffs and the court remarked,

"the principle that such a right (to sue) is in the body of the worshippers is recognized by Indian Courts."

Suit was filed by a Hindu against obstruction to procession. A Hindu residing in Shri Vithal Temple as a representative of the Hindu community filed a suit for permanent injunction restraining the defendant Railway Company from obstructing the ancient customary religious dindi procession twice every year. It was held that this was a case of private nuisance affecting only a certain section of the public who were interested in the procession and hence representative suit was proper.

Similarly, a Mohammedan worshipper of a mosque can sue in a representative capacity, any one who interferes with his right to worship.

A suit by persons belonging to the same caste or body is within the rule. A suit to establish the rights of the sweepers and chamars can be filed by persons belonging to those castes as they share "same interest."

A suit by plaintiffs who were members of the Vadagalai sect against the defendants who were
members of the Tengalai sect for a decree declaring that the defendants were not entitled to install an image of their saint Manavala Majamuni in a certain temple of the village and directing that the same be removed if it was so installed is another example.

In a recent suit by a member of Jain Community for declaration that Amul Cheese was not purely vegetarian product and defendant should not sell it as such, sought to be filed by members of Jain Community in representative capacity on ground that he along with other Jains were deceived because of misrepresentation made by defendants, the Bombay High Court held that the lower court was entitled to grant permission. The disciples of mutt can sue for setting aside an improper alienation of the mutt properties and for restoration thereof to the head of the mutt.

A representative suit by certain members (Protestant Christians) challenging a resolution bringing into existence the Church of South India on the ground that their rights of worships would be affected by the implementation of the said resolution is held maintainable by the apex Court.

In fact, suits of such a nature which necessarily involve group rights have to be brought
in a representative capacity lest they will not be binding on the parties other than those who are parties to the suit. Thus, in a recent decision where religious rights of Muslim community were concerned and the civil court had granted injunction restricting performance of religious rights at a particular place, the Court quashed the decree and order of the civil court. The High Court held that as the suit was not filed in a representative capacity, it can not bind those who are not parties to the suit. Therefore, a third party who was a member of the same community aggrieved by such restriction could move the High Court under Art. 227 of the Constitution of India.

(2) Suit to establish or negative a public right by showing special damage:

Where numerous persons, not being the general public (but a class of public), suffer special injury in respect of a public right, any one of such persons may bring a representative suit on behalf of all such persons. The rule is designed to allow one or more persons to represent a class having special interest than to allow such persons to sue on behalf of the general public. Some of the examples of such suits are village communities suing to establish...
their rights in connection with pathways, village-wells, ghats, public-highways, fishery, etc.

Thus, construction of houses by persons of other village within area of Vyok (Forest reserve) constituted infringement of the orbit of right of villagers. Suit by one of the villagers on behalf of all to prevent infringement of right was maintainable.

Similarly, it has been held that inhabitants of particular locality can sue to enforce a customary right. All inhabitants of district entitled to the right need not be made plaintiffs.

Where the inhabitants of a village claim a right of way over plaintiff's land, the plaintiff, with the court's permission may sue one or more of them on behalf of all to negative the right.

Under the common law, a private person cannot maintain a suit in respect of a public nuisance unless he is able to show that he has suffered special damage thereby. Section 91 of the Code provides an exception to that rule and enacts that a suit in respect of public nuisance could be maintained even without proof of special damage provided the suit was filed by the Advocate-General or the consent of the Advocate General was obtained.
and the other conditions of the section were satisfied. After 1-2-1977, when the amendment has come into force, the consent of the Advocate General is not necessary and such a suit can be filed even for other "wrongful acts" affecting the public. Instead, the consent of the Court is required. Section 91 does not, as is made clear by subsection (2), deprive any person of any right which he may have independently of its provisions as for instance, a right to sue in respect of a public nuisance on proof of special damage. The words "public nuisance" have not been defined in the Code. But by virtue of Section 3(48) of the General Clauses Act, the words mean public nuisance as defined by the Indian Penal Code. The essence of the definition of "public nuisance" under S. 268, I.P.C. is that the injury danger or annoyance must be to the public, or to the people in general who occupy property in the vicinity or who use any public right.

Section 91 does not control or restrict the provisions of 0 1, R.8 under which a person may sue on behalf of others. Section 91 has no application to the infringement of the special right of a particular class of the public. In such a
case, a person may sue as a member of the class whose rights are affected. This section is no bar to such a suit. Thus, it is clear that if a representative plaintiff can show special damage to the class he is representing due to the nuisance caused by the defendants he can file a representative suit under Order 1, Rule 8 and it need not be a case of public nuisance as contemplated by Section 91 of the Code.

Thus, it was held in Choudhary Bibhuti Narayan Singh and others v. Maharaja Sir Guru Mahadev Ashram Prasad Sahi Bahadur that in the case of suits relating to obstructions to village ways, if the plaintiff does not utilize the special provisions of S. 91, or prove special damage, but purports to sue under 0.1, R.8, he must plead and show,

1. that he sues not on behalf of the public generally, but on behalf of a limited and clearly defined class with which he has a common interest and a common right of suit,

2. he must plead and show that the pathway in question is not a public highway in the full sense, in which all members of the public who happen to go to the place have equal interest, he must show that it is a way or path of the quasi public type
in which the class he represents has got special rights as distinct from those of the public generally.

So as not to leave any doubt it is clarified here that the above provision in the Code under Section 91 relating to public nuisance, Section 92 relating to public charities and use of Section 133 of Criminal Procedure Code for abatement of public nuisance, and a Public Interest Litigation are types of proceedings which are sometimes termed as representative proceedings. But the main distinction, between a traditional representative suit under Order 1, Rule 8 and all these types of actions is that in a representative suit the person suing or defending must himself be an injured person. A detailed discussion of this aspect is made later while dealing with PIL.

(3) Suits to enforce rights arising as tax payers of the municipality:

Representative suits by rate-payers challenging the validity of the municipal assessment as a whole was held to be maintainable. Thus the rate payers were held to be having the same interest for this purpose. The analogy of the same can be applied to in fact all such grievances which the citizens
may have against local, government and semi-government authorities.

(4) Suit to set aside fraudulent transfers:

A suit to set aside a transfer of immovable property on the ground that it is in fraud of the creditors has to be brought in a representative capacity as per Section 53 of the Transfer of Property Act, 1882. It can't be brought by some only of the creditors for their benefit alone. This is because the debtor might otherwise be exposed to a multiplicity of suits by each and every creditor. The decree would be in the form of the Schedule I, Appendix D (13), of the CPC declaring the transfer void as against the plaintiff and all other creditors, if any, of the defendant.

(5) Suit by co-owners:

One co-owner can maintain a suit on behalf of all for recovery of land against trespass. Roe and Jwala Prasad JJ. remarked in the case:

"Where a number of persons hold a joint interest in a cause of action and where the extent of the interest of each is an unspecified interest, it is open to any one of those persons to maintain on behalf of
the whole body of interested persons a suit to establish the cause of action set forth and that in the event of success of that one person all persons interested will enjoy the fruits of the litigation, unless there is some specific law forbidding such a procedure. Under the common law the plaintiff must be held entitled to bring on behalf of the whole body of persons interested a suit for the recovery of the land upon which the principal defendants are trespassing, and the whole body of those interested participate in the fruits of his success."

(3) Suits by or against officers of clubs and associations:

Officers of unincorporated associations or clubs can be sued or can sue only after obtaining permission under this rule even though they may have been authorized by a resolution of the association to sue or defend a suit. Under section 6 of the Societies Registration Act of 1860, a society registered under the Act can sue or be sued in the name of the President, Secretary or other proper officer of the company. Permission to sue an unincorporated unregistered body in a representative capacity can be given under this rule.
(7) Environmental Representative Suits:

It is possible for an individual by way of a Civil Suit or a Criminal complaint or Public Interest Litigation under Indian substantive law to obtain reliefs against environmental pollution. Therefore, an individual's right to sue is well established in this area. To succeed in filing an environmental representative suit all that remains to be satisfied now are the conditions of Order 1, Rule 8 which prescribes the procedure for representative suits. As pointed out earlier, "same interest" is the main condition that needs to be satisfied for the application of that rule. Let us start by a detailed discussion of a case in point, which can be used as a model for this purpose.

In Pakkle and others v. Aiyasami Ganapati and others, an appeal arose out of a suit filed by the plaintiffs in a representative capacity on behalf of the villagers of Pottalkadu to restrain the defendants from laying salt pans in the bed of the suit tank thereby making the water in it useless to the people for bathing and taking drinking water. The Trial Court, took the view that during the past about ten years, a number of persons have laid extensive salt pans almost
on all the sides of the suit tank with the result that even if the rain water were to gather and flow into the suit tank, it cannot but be saltish. Hence, it cannot be said that the water has become saltish because of defendants laying salt pans in the portion of the salt tank and therefore plaintiffs were not entitled to the relief of injunction asked for against the defendants. On appeal, the lower appellate court held that the property in dispute is a tank, that it has been recognized and used as such by the villagers in general. The question as to whether the water in the tank is fit for domestic use or not is foreign to the scope of the present enquiry, but that the question is whether the defendants, though they are some of the villagers, are as of right entitled to convert the property or any portion thereof into salt pans and that they are not so entitled and therefore an injunction as prayed for can issue. Hence, it allowed the appeal and decreed the suit.

The original defendants filed a second appeal to the Madras High Court. They urged that the suit tank being a Government property and not the property of the villagers in general, there can be no injunction restraining the defendants from
converting the bed of the suit tank into salt pans, and that is for the Government, who are the owners of the tank to prevent the defendants from doing anything on their property. The Madras High Court found that some of the villagers used to take water from the suit tank, that there cattle also used to drink water from the same, and that they used to take bath and wash their cattle therein is correct. But, naturally enough, not everybody in the village might have been using the water of the tank, nor is it necessary that it should have been so used before the villagers can acquire a common right in respect of the water in the tank. The Court concluded that the villagers have an immemorial right to the use of the water in the tank for their drinking and bathing purposes, as also for bathing and washing their cattle.

The Court went on, once it is established that the villagers have a common right over the water in the tank for purposes of using it for their bathing and drinking purposes, any interference with that right would give them a cause of action, even though the interference is not in respect of a land belonging to the plaintiffs. On the basis of the law of nuisance as developed in England, the Court held that the
action of the defendants would amount to a nuisance. Hence, the Court held that the Plaintiffs would be entitled to an injunction even though the land in respect of which they claimed injunction is not owned by them and it is no defence to the action of the plaintiff that the people other than the defendants have already done something which has had the effect of making the water in the tank saltish.

It is clear from the decision of the court that it considers the interest of the villagers in the purity of the water the "same interest" for the purpose of Order 1, Rule 8 and allows a representative suit. It may also be noted that the property did not belong to them. Furthermore, as the court points out not everybody in the village was using the water. Yet, a representative suit to protect those who were using the water was allowed. It may also be noted that the class is not specifically identified.

It can therefore be inferred from this decision that if a group of people as covered by the interpretation of the term "numerous persons" can show that they are all similarly affected by the pollution caused by the defendants they can join hands and obtain relief under the substantive
law of injunction compensation etc. Their interests do not have to be exactly alike.

(8) Allottee of a Housing Board or a common tenant:

The Supreme Court of India in The Chairman, Tamilnadu Housing Board, Madras V/S. T.N. Ganapathy a recent decision, held, where all the allotments of buildings with land in a colony of Housing Board were made under the scheme and all the relevant facts are common and the basis of the impugned demand regarding settlement of dues by the Board is equally applicable to all the allottees and plea of the plaintiff is available to all of them the grant of permission to the plaintiff to proceed under 0.1,R.8 would be proper. One of the allottees filed a suit in a representative capacity for permanent injunction against the appellant Tamilnadu Housing Board from demanding and collecting from the allottees any additional amount for settlement of lands with buildings in the colony Ashok Nagar.

Similarly it has been held that many tenants who have common grievance against the landlord regarding the denial of tenancy rights can be permitted to file a representative suit.
Investors:

A shareholder or debenture holder also can sue in a representative capacity against the acts or omissions of the company as representative of other shareholders or debentureholders. To succeed, however, such a person has to mainly satisfy the conditions of the Indian Companies Act, 1956.

The rule applies to all the proceedings where the Code is applicable. Thus, it has been held that this rule applies to proceedings under S. 14 of the Arbitration Act to set aside an award. So also Administrative Tribunals, have authority to entertain the petitions in a representative capacity. Thus it has been held that under S.19 of the Administrative Tribunals Act, read with R.4(5)(b) of Central Administrative Tribunals Procedure Rules (1987), a collective grievance of a large number of persons in respect of a dispute on a service matter can be put forward on their behalf in a single application by an association representing them.

Another recent growing substantive area of law where this procedure of representative suits has been given express recognition by the Central Govt. is that of Consumer Protection. The Consumer
Protection Act, 1986 is amended in the year 1993 and, now the definition of the term 'Complainant' in Section 2 includes one or more consumers, where there are numerous consumers having the same interest.

In Sec.13 of the Consumer Protection Act 1986, Sub-sec.6 has been inserted as under:-

"(6) Where the complainant is a consumer referred to in sub-clause(iv) of clause(b) of sub-section(1) of section 2, the provisions of the rule 8 of order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

Thus provision of Representative Suits under Or.1, Rule 8 is expressly made applicable to the complaints which come under the purview of Consumer Protection Act, 1986. The statement of objects and reasons of the amending Act provides that the amendment is meant to enlarge the scope of the Act so as to enable the Consumers to file class-action complaints where such consumers have a common interest and to file complaint relating to restrictive trade practices adopted by a Trader.

As has been stated above, even if no such express application is provided for in any such
Act, Statute or any other substantive right derived from judicial decisions, the provision of Representative Suit can very well be made applicable wherever the Code of Civil Procedure is applicable, i.e. in respect of all suits of civil nature as discussed above.

The above categories of representative suits are not exhaustive of all the substantive areas of law in India. It has to be borne in mind that this is a procedural legal device and success in the suit will depend upon substantive law which as pointed out in the beginning of this thesis will depend on development of common, codified, religious or personal law in India. We may also recall Section 9 of the Code which authorises filing of all suits which involve civil rights and obligations in civil courts. If there are any such rights or obligations which involve "numerous persons" and if they have "same interest" in such a right or obligation a representative suit shall lie. We will see the extent of use of representative suits in India after we discuss the American class action suits.
Foot Notes of Representative Suits in Substantive Areas of Law in India

(23) AIR 1942 Cal 360 (364) (DB)

(24) AIR 1957 Andh Pra 964 (965) : The rule is only an enabling provision and does not compel any one to represent many if, by himself, he has a right of a suit.

(25) AIR 1933 Lah 749 (751) (DB).

(26) AIR 1927 Lah 196 (197).

(27) AIR 1969 Mad 351 (353)

(28) AIR 1952 Kutch 92 (92, 93)

(29) (1882) 8 Cal 32 (41) (DB)

(30) (1968) 2 Mys. LJ 172.

(31) (1900) 22 All. 269 (DB)

(32) AIR 1934 Cal 345 (347, 348) (DB).

(33) AIR 1933 Pat 302 (302).
(34) AIR 1957 Manipur 25.

(35) AIR 1916 Pat 26 (27) (DB). This case is discussed in greater details while discussing the categories of representative suits.

(36) AIR 1940 Pat 449 (464)

(37) AIR 1952 Madh Bha 158 (158, 159).

(38) AIR 1990 S.C. 642.

(39) AIR 1973 Mys 280 (288).

(40) AIR 1946 Nag. 228: Section 91 of the Code relating to public nuisance is held not applicable in this case. Relation of Section 91 to Order 1, Rule 8 is explained later in this thesis.

(41) (1885) 7 All 178 (182)(FB), AIR 1922 Oudh 1 (2) (DB).

(42) AIR 1935 Mad 542 (543).

(43) AIR 1927 All 96 (97).
AIR 1942 Cal. 360.

AIR 1940 Pat. 449 (464): The doctrine of special damage is based on the principle of English common law that there can be no private action for public wrong. To give a right of suit the wrong must be in some way special or peculiar to the person who sues, and it is based on the sound rule that no man should be harassed by a multiplicity of suits in respect of a single wrong. It has been adopted by the Courts in India as a matter of equity and good conscience and must govern their procedure in the absence of any specific provision of law giving a special right of suit in derogation of the general principle. It is
however a doctrines which has got two very definite limitations: first, it applies only to cases regarding public rights in the full sense. Secondly, an invasion of special right will provide a cause of action without special proof of damage, for, in such a case the law will presume damage.

(50) AIR 1968 Pat 422 (432).

(51) AIR 1921 Lah 76 (77).

(52) AIR 1925 Cal 1233.

(53) AIR 1964 Orissa 18.

(54) AIR 1940 Pat 247 (248).

(55) AIR 1980 Gau. 12(15,16)

(56) AIR 1980 Cal. 10 (11),12).

(57) (1888) 15 Cal 460(465,466) (FB), AIR 1960 M.P.288 (288)

(58) AIR 1940 Pat. 247 (248)
(59) Text of Section 91 CPC as amended in 1976:

Public Nuisance: (1) In the case of a public nuisance or other wrongful act affecting or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case may be instituted (a) by the Advocate-General, or
(b) with the leave of the court, by two or more persons, even when no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to affect any right of suit which may exist independently of its provisions.

(60) It is outside the scope of this thesis to analyze the scope of Section 91 of the Code. But it is necessary to keep in mind the distinction between suits under this section and Representative Suits.

(61) AIR 1972 Raj 103 (106), AIR 1937 All 78 (79), AIR 1936 Oudh 154 (155).

(62) Text of Sec. 268 Indian Penal Code: A person
is guilty of public nuisance, who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A public nuisance is not excused on the ground that it causes some convenience or advantage.

(63) AIR 1940 Pat 449 (465), AIR 1925 Cal 1233 (1233), AIR 1934 All 941 (943).

(64) AIR 1969 Mad 351 (356): this case will be analyzed in detail later while discussing representative environmental suits in India.

(65) AIR 1940 Patna 449.

(65A) Text of Sec.133 Cr. P.C: Conditional order for removal of nuisance:
(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially employed in this behalf by the State Government on receiving the report of
a police officer or other information and on taking such evidence (if any) as he thinks fit, considers:

a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

e) that any tank, well or excavation adjacent
to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order -

(i) to remove such obstruction or nuisance:
or

(ii) to desist from carrying on or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees;
(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be called and made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Text of Section 92 CPC: Public Charities:

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the (leave of the Court) may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government
within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate to obtain a decree
a) removing any trustee;
b) appointing a new trustee:
c) vesting any property in a trustee:
(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust-property in his possession to the person entitled to the possession of such property;
d) directing accounts and inquiries:
e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
g) settling a scheme; or
h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, (or by any corresponding law in force in (the territories which, immediately before the 1st November, 1956, were comprised in Part B States), no suit claiming any of the reliefs
specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub section.

3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following circumstances, namely:
   a) where the original purposes of the trust, in whole or in part,-
      i) have been, as far as may be, fulfilled : or
      ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or
   b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust: or
   c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made
applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes: or
d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or
e) where the original purposes, in whole or in part, have, since they were laid down-
i) been adequately provided for by other means, or
ii) ceased, as being useless or harmful to the community, or
iii) ceased to be in law, charitable, or
iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

(67) Relevant text of Section 53 Transfer of Property Act 1881: A suit instituted by a creditor (which term includes a decreeholder) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.(1974)

(68) AIR 1916 Patana 26. Roe and Jwala Prasad JJ.

(70) AIR 1966 All. 570 (574), AIR 1957 Trav.Co. 259 (260).

(71) 1976 All LJ 7, AIR 1984 All. 198 (202,203,204), AIR 1973 M.E. 216 (217) (DB)

(72) Under the Indian law of torts, an individual can file a suit for damages and injunction under the common law concepts of negligence, nuisance, trespass and product liability. See Ramaswamy Iyer's The Law of Torts, edited by S.K. Desai and Kumad Desai, 1975, N.M. Tripathi, Bombay, p.561-563. It has mainly taken three forms, one a civil suit at the lowest level of the judiciary(e.g. AIR 1960 All.632, AIR 1978 All 86, AIR 1959 Punj. 217)(this is where representative suit too can be filed), two, a criminal complaint if the act is an offense (the best example is AIR
1980 SC 1622, Ratalam Municipal Council Case) and more recently a writ petition to the Supreme Court or High Courts of the states by any public spirited individual or organisation a reference to which is made later. (For example, see AIR 1985 SC 652, 1259, AIR 1987 S.C. 359, M.C. Mehta v. Union of India cases and Marudhar Mridul, PIL a Profile Bharat Law House, Jaipur, 1986, Delep Goswami A Handbook of Pollution Control by Industries and Government Bodies with Supreme Court Decisions, Econ Business Review, (1988).

(73) AIR 1969 Madras 351.

(74) AIR 1990 S.C. 642

(75) AIR 1991 Del.334 at 336.

(76) (1986)88 Bom.L.R.649 at 655, 656

(77) AIR 1936 Bom.250(255)

(78) (1987) 4 ATC 402(404)(CAT) Delhi