Chapter - V
JUDICIAL ACTIVISM
AND PROTECTION OF
HUMAN RIGHTS
5.1 Introduction

The responsibilities that a court carries in a country with a written constitution are very difficult—much more—difficult than the responsibilities of a court without a written constitution. Because here, they do not just interpret the laws but also the provisions of the constitution, and, are thus entrusted with giving meaning to the cold letter of the constitution. The courts thus act as the supreme interpreter, protector and guardian of the supremacy of the constitution by keeping all authorities—legislative, executive, administrative, judicial or quasi-judicial—within legal bounds. The judiciary has the responsibility to scrutinize all governmental actions and it goes without saying that in a constitution having provisions guaranteeing fundamental rights of the people, the judiciary has the power as well as the obligation to protect the people's rights from any undue and unjustified encroachment. Judiciary is the custodian of the Constitution. An independent judicial system is perhaps better than any other institution to maintain the perfect equilibrium between the liberty of the individual and the power of the State. In a democratic socialist republic like ours, everyone is under a duty to act in co-operation and co-ordination with everyone else. If, while dealing with cases, the judiciary finds that a law requires a change, or a particular legislation is essential for fulfilling the Objective of the Constitution, or that it would serve better the rule of law if the executive adopts a particular line of action, there can be no Objection; instead it becomes the duty of the Court to point out the lacuna in the law or in its execution and implementation.[1] In fact, courts can issue directions to the executive and the legislature to perform their obligatory duties. Lord Denning has rightly observed: "I think the Judges alone can deal with the instant case, to remedy the wrong in the case which is before them. If you wait for the
legislation you may wait for years and years and that can't affect the instant case.

The independence of judiciary is the "live wire" of our judicial system. The judiciary under our constitutional scheme has been performing positive and creative function in securing and promoting human rights to the people. The Apex Court in India in the exercise of its jurisdiction may pass such decree or make order as is necessary for doing "complete justice" in any cause or matter pending before it. [2] The Supreme Court under article 32 of the Constitution has the power to issue any orders, directions or writs, whichever may be appropriate, for the enforcement of fundamental rights enshrined in the Constitution. Similarly the High Courts have the power under article 226 of the Constitution to issue any order, directions or wants, whichever may be appropriate, for the enforcement of fundamental rights or for any other purpose. In this regard the power of the High Courts is wider than the Supreme Court. The judiciary in India has exercised this power in the most creative manner. It has devised new strategies, forged new tools and broadly interpreted the letter of law to ensure the protection of human rights to the people.

Method of Evaluation: Judicial Activism and Protection of Human Rights

In this study, evaluating and managing all of the information gathered from the secondary sources. Furthermore, it gives a lot of useful information by evaluating the cases under the different categories and the researcher try to confine study into limited categories like given below:

A. Procedure Established by Law: A New Approach

B. Fair Procedure and Public Interest Litigation

C. Human Dignity and Protection against Exploitation
Article 21 of the Indian Constitution provides:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”. [3]. Thus, it is clear that a person can be deprived of his right to life and liberty only according to "procedure established by law". From the very commencement of the Constitution, the significance of the words, "procedure established by law" has been a subject matter of judicial consideration. The judicial consideration started in 1950 itself in the case of K Gopalan vs. State of Madras. [4] In this case, the supreme Court was divided while interpreting the expression procedure established by law". The majority view held that "procedure established by law" meant the procedure enacted by the Parliament and State Legislature. The minority wanted to apply "due process clause" of the U.S. Constitution. It was argued by the petitioner that under the Constitution of the United States of America, the corresponding provision was found in the 5th and 14th Amendments, where the provision, interalia, was that no person shall be deprived of his life or liberty or property except by due process of law. It was contended that the Indian Constitution gave the same protection to every person in India except that in the United States "due process of law" had been construed by its Supreme Court to cover both substantive and procedural law, while in India only the protection of procedural law was guaranteed and that the word "due" made no difference to the interpretation of the words in article 21. The word "established" has a wider meaning than the word "prescribed".
The word "law" did not mean "enacted law" because that would be no legislative protection at all. If that definition was accepted, any Act passed by the Parliament or the State Legislature which was otherwise within its legislative power, could destroy or abridge this right. On the basis of the same reason, it was further argued that if that was the intention, there was no necessity to put this as a fundamental right in Part III at all. Regarding the meaning of the word "law", it was argued that it meant *jus*, that is, law in the abstract sense of the principles of natural justice and not *lex*, that is, "enacted law. Chief Justice Kania gave four points which distinguished the American Constitution from article 21. Firstly, in the American Constitution, the word "liberty" was used, *simpliciter*, while in India it was restricted to "personal liberty". Secondly, in the American Constitution, the same protection was given to property, while in India; the fundamental right in respect of property was contained in article 31. Thirdly, the word "due" was omitted altogether and the expression "due process of law" was not used deliberately under the Indian Constitution. Lastly, the word "established" was used and was limited to "procedure" in article 21.

Rejecting the contention for the petitioner, Chief Justice Kania held that the word "law" must mean enacted law. The word "established" according to Oxford Dictionary means to fix, settle, institute or obtain by enactment or agreement. According to him, the word "established" itself suggested an agency which fixed the limits. The dictionary would show that this agency could be either the legislature or an agreement between the parties. He felt that, therefore, there was no justification to give the meaning of *jus* to "law" in article 21. The expression "procedure established by law" seemed to be borrowed from article 31 of the Japanese Constitution. But in order to determine the meaning of "law" in the phrase "procedure established by law", 210
other articles of that Constitution which expressly preserve other personal liberties in different clauses had to be read together. These articles of the Japanese Constitution had not been incorporated in the Constitution of India in the same language. It was not shown that "law" means *ius* in the Japanese Constitution. The word "due" in the "due process of law" in the American Constitution was interpreted to mean "just" by the Supreme Court in America. The deliberate omission of the word "due" from article 21 lent strength to the contention that the justiciable aspect of law, that is, to consider whether it was reasonable or not by the court did not form part of the Indian Constitution.

The other judges constituting the majority opinion also expressed the same view. Justice Das cited the meaning of the word "establish" given in the Oxford English Dictionary and Annandale's edition of the New Gresham Dictionary. According to this New Gresham Dictionary, the word "establish" meant amongst other things, to find permanently; to institute; to enact or decree; to ordain; to ratify; to make firm. He observed that in that sense the word "established" would mean "enacted" and "established by law" would, therefore, mean "enacted by law" and if that meaning was accepted, "law" must mean "State-made law" and not the principles of natural justice. He discarded the fear that it would give supremacy to the legislatures in the following words: "This absolute supremacy of the legislative authority has, however, been cut down by Article 21 which delimits the ambit and scope of the substantive right to life and personal liberty by reference to a procedure and by Article 22 which prescribes the minimum procedure which must be followed".

He also rejected the introduction of American doctrine of "due process" in article 21 because he felt that the word "due" did not find place in article 21 so as to qualify the procedure. The contrary view was expressed by Justice
Mahajan and Fazal Ali. Justice Mahajan stated that article 21 laid down substantive law as giving protection to life and liberty in as much as it said that these could not be deprived except according to "procedure established by law". It meant that before a person could be deprived of his right to life and liberty, there should exist, as a condition precedent, some substantive law conferring authority for doing so and the law should further provide for a mode of procedure for such deprivation. He felt that article 21 gave complete immunity against the exercise of despotic power by the executive. The article gave immunity also against invalid laws which contravened the Constitution. It also guaranteed that there should be some form of proceeding before a person could be condemned in respect of his life and liberty. He remarkably stated that the article negative the idea of fantastic arbitrary and oppressive forms of proceeding. Fazal Ali, J., viewed that "law" in article 21 mean "valid law" and with reference to procedure for the deprivation of personal liberty it concluded four elements or qualifications as explained by Wills. [5] These elements were:

(1) Notice

(2) Opportunity to be heard

(3) Impartial tribunal

(4) Orderly course of procedure

Justice Fazal Ali observed that these qualifications were independent of any claim of the judiciary through the "due process clause" and could be part of the phrase "procedure established by law". Such elements could be found in the normal interpretations of the "law of the land" in English. Halsbury had observed:

It seems to me that there should be added to this list the following rights which appear to have become well-established the right of the subject to have any
case affecting him tried in accordance with the principles of natural justice, particularly the principles that a man may not be a judge in his own cause, and that no party ought to be condemned unheard, or to have a decision given against him unless he has been given reasonable opportunity of putting forward his case. [6]

The *Gopalan*’s interpretation of the expression “procedure established by law” was also followed in the cases of *Collector of Malabar vs. E. Ebrahim Hajeet* [7] and *Ram Chander Prasad v. State of Bihar*. [8] In these cases also the Supreme Court held that “procedure established by law” meant procedure enacted by law made by the State, that is, the Parliament or the State Legislatures. The Court did not favour the interpretation of the word “law” in the abstract sense embodying the principles of natural justice. However, *Lakhanpal vs. Union of India*, [9] shows a change in the judicial approach. No doubt the detente was not given any right to represent at the time of review of his case, but the Court held that the detente must be given such an opportunity on the ground of principles of natural justice. The Supreme Court took more than 25 years to free itself from the shackles of *Gopalan case*. This feat was achieved in *Maneka Gandhi vs. Union of India case*, which did it through *Bank Nationalization case*. [10] In *Bank Nationalizations case* the court held that fundamental rights conferred by Part III were not distinct and mutually exclusive rights. The Court reversed the view of *Gopalan* that article 22 of the constitution was a complete code and that articles 19, 21 and 22 had different dimensions. This led Justice Bhagwati (as he then was) to say in *Maneka Gandhi case* that article 21 could not be divorced from article 19, or, for that matter article 14, which takes care of arbitrariness the purpose of natural justice also being to take care of arbitrariness; and so natural justice is read in article 21. Justice Bhagwati observed:
The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction.

Justice Bhagwati sought help from article 14 in making the procedure under article 21 as fair, just and reasonable. In E.P. Royappa vs. State of Tamil Nadu case, the Court had held:

Quality is antithetic to arbitrariness, in fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarchy. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore, violative of Article 14.

Following Royappa case, Justice Bhagwati held: The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Thus, Justice Bhagwati read articles 14 and 19 in article 21 in order to make the "procedure" under "procedure established bylaw" as "fair, just and reasonable".

Among the concurring opinions in this case, Justice Chandrachud (as he then was) also held that mere prescription of some kind of procedure could not ever meet the mandate of article 21. The procedure prescribed by law must be fair, just and reasonable, not fanciful, oppressive or arbitrary. But he cautioned that
"due process" should not be read into article 21. He pointed out: The content which has been meaningfully and imaginatively poured into "due process of law" may, in my view, constitute an important point of distinction between the American Constitution and ours which studiously avoided the use of that expression.... Our Constitution too strides in its majesty but, may it be remembered without the due process clause...

Justice Chandrachud did not allow the entrance of American due process clause because one right leading to another and that another to still other would produce "grotesque result.

In fact, the fear was that once "procedural due process" was allowed to become a part of Article 21, it would be difficult to stop "substantive due process". Chief Justice Beg, who joined the majority opinion stated:

The field of "due process" for cases of preventive detention is fully covered by article 22, but other parts of that field, not covered by Article 22, are "unoccupied" by its specific provisions. I have no doubt that, in what may be called "unoccupied" portions of the vast sphere of personal liberty, the substantive as well as procedural laws must satisfy the requirements of both Articles 14 and 19 of the Constitution.

Thus, "substantive" as well as "procedural due process" was introduced in article 21 of the Constitution. Justice Krishna Iyer, who agreed with the majority but delivered a separate opinion also observed: 'Procedure established by law', with its legal potentiality, will reduce life and liberty to a precarious playing if we do not ex-necessitate import into those weighty words an adjectival rule of law, civilized in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head ....Processual justice is writ patently on Art. 21. It is too
grave to be circumvented by a black letter ritual processed through the legislature. [11]

Thus, according to Justice Krishna Iyer also, procedure must be "fair, just and reasonable". But he added to the opinion of Justice Bhagwati by taking "law" also reasonable. He interpreted the expression "procedure established by law" in such a manner as to reach the conclusion that "law" and "procedure" must be "fair", just and reasonable".

He explained: What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the process is emphasized by the strong word 'established' which means settled firmly not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes 'established' procedure. And 'law' leaves little doubt that it is normally regarded as just since law is the means and justice is the end.

Once the principles of natural justice have been read into article 21 of the Constitution there is nothing to prevent the Court from construing "law" as reasonable law. It will be very strange indeed, if article 21 leaves the legislature free to dispense with "fair play in action" while authorizing the violation of basic human right to life and personal liberty.

After *Maneka case*, article 21 has become counterpart of "procedural due process". Just as in United States "due process" clause is used to maintain prison discipline, similarly in India, procedural fairness under article 21 encouraged the Summit Court to bring prison reforms.

In *Sunil Batra (I) v. Delhi Administration* [13] Justice Krishna Iyer observed:

True, our Constitution has no "due process" clause or the VIII Amendment, but in this branch of law, after *Cooper...and Maneka Gandhi case* ...the consequence is the same. For what is punitively outrageous, scandalizing unusual or cruel and rehabilitively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Arts. 14 and 19 and if inflicted-with procedural unfairness, falls foul of Article 21.

In *Jolly Varghese vs. Bank of Cochin*, [14] Justice Krishna Iyer delivering the judgment, observed: The high value of human dignity and the worth of the human person enshrined in Art.21, read with Arts. 14 and 19, Obligates the state not to incarcerate except under law which is fair, just and reasonable in its processual essence. While saving the prisoners from prison torture, Justice Krishna Iyer again applied the concept of fair procedure in *Sunil Batra (II) v. Delhi Administration*” [15] and held: It is imperative, as implicit in Art. 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.

This trend of the Supreme Court was evident in the subsequent cases as well. When the Summit Court was passing through the continuous process of maneuvering "due process" under article 21, *A.K Roy case* [16] proved to be a deadly stroke. In this case it was contended that the National Security Act, 1980 must be struck down on the ground that it interfered with the liberties of the people. Chief Justice Chandrachud, while delivering the majority judgment
rejected the contention and held that the court could not invalidate on the specious ground that it was calculated to interfere with the liberties of the people.

It is submitted that the Chief Justice's refusal to examine the justness of the law under article 21 was born out of a narrow construction of that article which may not be consistent with the decisional law that had grown in the recent past. [17] It is really shocking that Justice Bhagwati was party to this decision, who himself had become the creator of "due process" under article 21 in Maneka case. It is even more surprising that while delivering the minority opinion in Bachan Singh case (which was delivered after this judgment) he gave the example of law of preventive detention to prove the existence of "due process" and in this case, he joined hands with Chief Justice Chandrachud to state that the power to judge the justness of preventive detention was not possessed by the court. A year later, Ranjan Dwivedi [18] joined the row of cases which recognized the entry of due process. In this case, the Supreme Court did not hesitate to admit that it was difficult to hold in view of Maneka and E.P. Royappa cases etc. that the substance of the American doctrine of "due process" had not still been infused into the conservative text of article 21. [19]

In Olga Tellis vs. Bombay Municipal Corporation [20] Chief Justice Chandrachud, while delivering the judgment, following the row of cases beginning with Maneka case, held that the procedure prescribed by law for the deprivation of the right conferred by article 21 must be fair, just and reasonable. It was pointed out:

The procedure prescribed by law for depriving a person of His right to life, must conform to the norms of justice and fair play. Procedure which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness,
thereby vitiating the law which prescribes that procedure and consequently, the action taken under it ....The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. [21]

Chief Justice Chandrachud also observed that if a law was found to direct the doing of an act which was forbidden by the Constitution or if for the performance of an act, it compelled the adoption of the procedure which was impermissible under the Constitution, it was liable to be struck down.

It is submitted that when the Summit Court is ready to strike down the "law" which prescribes unreasonable "procedure" that does not mean that only "procedure" should be reasonable but that the "law" prescribing that procedure must also be reasonable. The court may not want to allow substantive due process directly along With procedural fairness but indirectly and impliedly it has expressed so.

In Kartar Singh vs. State of Punjab[22] the Supreme Court has once again reiterated that the 'procedure' contemplated by article 21 is that the procedure must be "right, just and fair" and not arbitrary, fanciful or oppressive. In order that the procedure is "right, just and fair", it should conform to the principles of natural justice, that is, "fair play in action".

Thus, the Summit Court by adopting a new approach to the expression "procedure established by law" has marked a watershed in the history of development of human rights in our country and this affords protection not only against executive action but also against legislation and any law which deprives the person of his human rights would be invalid unless it prescribed a procedure for such deprivation which is "reasonable", fair and just".
5.3 Fair Procedure and Public Interest Litigation

One of the most important tasks before the State is to protect and promote the human rights of the people. But the question is whether the State misperforms or does not perform this important task, how to make it accountable for its actions or inactions and how to enable the "poor and oppressed" class of people to enjoy their basic human rights. Perhaps, "public interest litigation" is a partial answer to this. With the active assistance of the social activists and public interest litigators, the judiciary in India is promising innovative remedial attention for vindication of the governmental commitment to the welfare and relief of the oppressed and in protecting and promoting human rights of the people.

The concept and procedure of public interest litigation in India have been fashioned by the Supreme Court of India. They are still in the process of formulation and concretization. [23]

Public Interest Litigation is concerned not with rights of one individual but the interest of a class or group of persons who are either the victims of exploitation or oppression or are denied their constitutional or legal rights and who are not in a position to approach the courts for redressal of their grievances. It seeks to help the victims of governmental lawlessness or repression. [24]

In India, justice was only a remote and even, theoretical proposition for the mass of illiterate, underprivileged and exploited persons in the country till the concept of public interest litigation was accepted as a part of our constitutional jurisprudence. They were unaware of the law or even of their legal rights, unacquainted with the necessities of procedure involved, and too impoverished to engage lawyers, file papers and bear heavy expenditure on dilatory litigation. Thus, the vested interests that exploited them were
emboldened to continue with their cruel and even illegal practices with cynical contempt for the law. This vast underprivileged section of the society found they utterly helpless. Nor could anyone else take up their case for lack of locus standi or any direct interest in the matter. Thus, the activist judges expressed the opinion that the present legal and judicial system was a "colonial legacy" unsuited to our condition. They expanded the concept of locus standi from "traditional individualism" to "community orientation of public interest litigation" and thus relaxed the formalities of procedure.

The liberalization of the rule of locus standi was necessitated only because of the new constitutionalism blazed in Maneka Gandhi case and refined and extended in post—Maneka cases. In Maneka case the court expanded the scope of right to "life" and "personal liberty" by considering "procedure" under "procedure established by law" as "fair, just and reasonable". The concept of fair procedure led to Apex Court to leave the adversary procedure and adopt the new innovation of public interest litigation to give relief to prisoners, undertrial workers, bonded labourers, women, children and many others. The Summit Court also used this tool for the protection of environment which is an essential element needed to live a healthy life. [25]

In Ratlam Municipality case, [26] Justice Krishna Iyer observed: It is procedural rules, ..."which infuse life into substantive rights which activate them to make them effective" ...The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of "standing" of British Indian vintage.
In *Fertilizer Corporation Kamgar Union, Sindri vs. Union of India*. [27] Justice Krishna Iyer emphasized the importance of public interest litigation:

Law...is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction ....In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled, from it by narrow pendency now surrounding locus standi.

Justice Bhagwati, who was party to Krishna Iyers opinion in *Fertilizer Corporation*, gave a comprehensive exposition to his concept of public interest litigation in *S.P. Gupta vs. Union of India*. [28] According to him, the traditional rule, that judicial redress was available only to an aggrieved party, was "a rule of ancient vintage". Formulating the concept of public interest litigation, he observed: Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.
He further observed: It must not be forgotten that procedure is but a hand maiden of justice and the cause of justice can never be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it. Today, a fast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning.

It is an essential element of the rule of law that every organ of the state must act within the limits of its power and carry out the duty imposed upon it by the Constitution or the law. If breach of duty is caused by the state and injury is caused not to any specific or determinate class or group of persons but to the general public and if no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law because it would be open to the state or public authority to act with impunity beyond the scope of its power. Where the observance of the law is left to the sweet will of the authority bound by it without any redress, if the law is contravened, the courts cannot countenance such a situation. Therefore, the court relaxed the strict rule of standing which insisted that only a person who had suffered a specific injury could maintain an action for judicial redress and adopted a broad rule which gave standing to any member of the public who was not a mere busy body or a meddlesome interloper but who had sufficient interest in the proceeding. The Apex Court broadened this rule because: It is only the availability of judicial remedy for enforcement which invests law with meaning.
and purpose or else the law would remain merely a paper parchment. It is only by liberalizing the rule of locus standi that it is possible to police the corridors of power and prevent violations of law.

It is submitted that Maneka's case creation of "fair, just and reasonable" procedure protected the life and liberty of exploited through the expansion of the rule of locus standi by permitting the public-minded persons to seek the judicial redress for those whose life and liberty is at stake but they cannot protect it due to poverty or any other incapacity. The post-Maneka case judicial activism impressed upon the Summit Court to liberate itself from clutches of the traditional technicalities of procedure which is to be followed for access to justice, Maneka case made the procedure "fair, just and reasonable" in order to give protection from the executive action which is unfair and unreasonable.

In People's Union for Democratic Rights V. Union of India [29] Justice Bhagwati (as he then was) further elaborated the principle of public interest litigation.

Justice Bhagwati explained the scope and importance of public interest litigation in the legal aid movement, which is part of "fair, just and reasonable" procedure under article 21. He pointed out: Public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character...but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of a large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go
unnoticed and underdressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of government.

Justice Bhagwati (as he then was) again elaborated the importance of public interest litigation in _Bandhua Mukti Morcha vs. Union of India_ [30] Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to *make basic human rights meaningful to the deprived and vulnerable sections of the community*. The Constitution makers have also deliberately and advisedly not used any words restricting the power of the court to adopt any procedure which it considers appropriate in the circumstances of a case for the enforcement of a fundamental right.

If in the process of new judicial activism to control unfair procedure, any aspersion is cast on the executive that should not be taken in a wrong spirit. The Apex Court also admitted: When the Court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped *and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive*. The Court is thus merely assisting in the realization of the constitutional objectives.

The highest judiciary allowed the public spirited persons to come forward and become God fathers for the protection of human rights of the poor and ignorant. Due to the efforts of such public-spirited persons, _Hussain Ara case_
cried for the release of undertrials and echo was heard in *Khatri case* [32] and *Kadra Pehadiya case* [33]. Free legal aid was made part of "fair, just and reasonable" procedure to protect the fundamental rights of the poor.

*Sunil Batra case* [34] and *Sheela Barse case* [35] brought the inhuman and degrading condition of prisons and prisoners before the human rights conscious court. *P.N. Thumpy Thera vs. Union of India* [36] made the court to endorse *Francis Cordie Mullin case* [37] and observed that "the right to life has recently been held by this Court to connote not merely animal existence but to have a much wider meaning to include the finer graces of human civilization."

*Bandhua Mukti Morcha case* made right to live with human dignity a fundamental right under article 21. *Neeroja Chaudhary case* [38] released and directed for the rehabilitation of bonded labourers. *Olga Tellis case* [39] recognizing right to livelihood as a part of right to life.

In *Rakesh Chandra vs. State of Bihar*, [40] the Supreme Court in a public interest litigation, after not being satisfied with scheme furnished to it for improving conditions of mental hospitals, decided to monitor its management and a Committee was set up for this purpose.

In *Kishen vs. State of Orissa* [41] the Supreme Court treated the letter of the petitioner as public interest litigation wherein it was alleged that there were starvation deaths of the inhabitants in the districts of Koraput and Kalahandi of State of Orissa due to utter negligence and callousness of the administration and government of Orissa. The Supreme Court pointed out that it is the duty of the government to prevent such deaths and directions were issued to reconstitute the Natural Calamities Committee to keep a watch on the measures taken and which may be taken in future to prevent deaths due to hunger, poverty and starvation.
In A.S. Mittal vs. State of U.P.[42] where irreversible damage was caused to the eyes of the patients in eye camps, a public interest litigation was filed by the petitioner espousing the cause of unfortunate victims. The Court directed the State government to pay Rs. 12,500/- to each of the victims and Rs. 5000/- as costs to the petitioner for espousing the cause of victims and prosecuting it with diligence.

In Parmar and Katara vs. Union of India, [43] the Supreme Court laid emphasis on professional ethics of medical profession in a public interest litigation. The Court held that when an injured citizen is brought for medical treatment, he should instantaneously be given medical aid to preserve life and thereafter procedural criminal law should be allowed to operate in order to avoid negligent deaths.

It is feared that the executive may find little comfort with the court's new role in settling matters of administration over which it has little expertise or no claim. The court is already looked upon as a hostile branch of the government by the executive and public interest litigation contains all potentials for a possible confrontation between the court and the executive.

It is also feared that the concept of public interest litigation will encourage vexatious litigants to file a large number of cases and as a result, the judicial process will be abused causing further delay in the administration of justice and opening a floodgate of litigation.

Justice Krishna Iyer rejecting this fear in Bar Council of Maharashtra vs. M. V Dabholker,[44] observed: "The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system". The Australian Law Reform
Commission also opposed this argument: The idle and whimsical plaintiff, a
dilettante who litigates for a lark, is a spectra which haunts the legal literature,
not the court. Justice Krishna Iyer also pointed out in Fertilizer Corporation
Kamgar Union vs. Union of India [45]. We cannot be scared by the fear that all
and sundry will be litigation happy and waste their time and money and the
time of the Court through false and frivolous cases.

In People's Union for Democratic Rights case,[46] Justice Bhagwati (as he
then was) pointed out that there was misconception in the mind of some
lawyers, journalists and men in public life that public interest was unnecessary
cluttering up the files of the court and adding to the already staggering arrears
of cases pending in the court for years. Those who were decrying public
interest litigation did not realize that "it is only the moneyed who have so far
had the golden key to lock the doors of justice" and then for the first time the
portals of the court were being thrown open to the poor and the downtrodden,
the ignorant and the illiterate and that their cases were coming before the
courts through public interest litigation.

The Judiciary has been very cautious in entertaining the public interest
litigations. From case to case it has evolved various principles. Frivolous or
vexatious writ petition in the name of public interest litigation, filed mala fide
and arising out of enmity between the parties cannot be allowed. The Court has
to protect the society from so called protectors.

Mere obsession based on religious belief or personal philosophy cannot be
treated as legal disability entitling third party as 'next friend' to file public
interest litigation.

Public Interest Litigation espousing cause of an individual permissible only if
it falls within the purview of policy decision of general application. It cannot
be used to remove distress of any particular individual or satisfy that individual whims, however pious that may be. Converting individual dispute into public interest litigation should be discouraged.

In *Janata Dal vs. H S. Chowdhry*, [47] the Supreme Court has beautifully summarized the scope and object of public interest litigation, the horizon of which is widely extended and which at present constitute a new chapter in justice delivery system acquiring a significant degree of importance in the modern legal jurisprudence practiced by Courts in many parts of the world, based on the principle-"Liberty and Justice for all".

Thus, the concept of public interest litigation which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records, especially in the arena of human rights and legal treatment for the unrepresented and under-represented.

5.4 Human Dignity and Protection against Exploitation

Human rights are part and parcel of human dignity which is adequately secured by various provisions of the Constitution of India. The importance of the concept of human dignity is well exemplified by its inclusion in the national and inter-national basic legal texts. The preamble to the Constitution of India assures among other things "dignity of the individual". Personal liberty and human dignity is most cherished values of our Constitution. These are the necessary epitomes which help in the development of an individual's personality and in the realization of human rights. Right to life under article 21 of the Constitution means right to live with human dignity and free from all kinds of exploitation. In addition to this, article 23 specifically prohibits traffic in human beings and *beggar* and other similar forms of forced labour. Employment of children in hazardous employment is prohibited by article 24
of the Constitution. The State is expected to direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter evocation unsuited to their age or strength. Children are required to be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. The childhood and youth are required to be protected against exploitation and against moral and material abandonment. But in spite of the clear mandates of the Constitution, there has been exploitation of the people in various parts of the country and they have been living the life which is below human dignity. However, the judiciary has shown its deep concern for such people. Through judicial activism it has given new content and meaning to the letter of law.

(a) Bonded Labour

Bonded labour - or debt bondage - is probably the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay.

Bonded labour is prohibited in India by law vide Articles 21 and 23 of the Constitution. A specific law to prohibit the practice was legislated only in 1976 known as the Bonded Labour System (Abolition) Act. With the commencement of the Act the following consequences followed: bonded labourers stand freed and discharged from any obligation to render to bonded labour. All customs, traditions, contracts, agreements or instruments by virtue of which a person or any member of family dependent on such person is required to render bonded labour shall be void. Every obligation of bonded labourer to repay any bonded debt shall be deemed to have been extinguished.
No suit or any other proceeding shall lie in any Civil Court or any other authority for recovery of any bonded debt. [48]

The President promulgated Bonded Labour System (Abolition) Ordinance, 1975 on 24 October, 1975. This Ordinance was replaced by the Parliament by the Bonded Labour System (Abolition) Act, 1976.

This Act was enacted with the object of giving effect to article 23 of the Constitution and to strike against the system of bonded labour which had been a shameful scar on the Indian social scene even after independence. Though technically bonded labourers were freed in 1975 yet the system of bonded labour or forced labour exists in different parts of country even after thirty eight years have passed when legislature attempted to abolish it. Peter Davies, Director of the Anti-Slavery Society, at a meeting of the working group on slavery, a subsidiary body of U.N. Commission on Human Rights, Geneva, criticized the Indian Government's performance in tackling the problem, saying that the action taken by it was "at best deficient" and "at worst non-existent". He also implied that political will to deal with the problem in a time bound manner was lacking in India. [49] There are many reasons which are responsible for the failure of the Bonded Labour System (Abolition) Act, 1976. Some of the reasons are as under:

*First*, there has not been proper identification of the bonded labourers. The process of identification and release of the bonded labourers is a process of discovery and transformation of non-being into human beings. It has usually been found that the administration instead of identifying the bonded labourers, denies the existence of bonded labourers. [50]

*Secondly*, most of the workers are totally ignorant or unaware of their right and entitlements. *Thirdly*, sometimes vested interests obstruct the proper
implementation of the beneficial provisions of laws. Fourthly, the inadequate punishment to those who violate the labour laws, makes it impossible to ensure the observance of beneficial provisions for the have-nets. In that case the welfare provisions remain only as paper tigers without any teeth or claws. Lastly, rehabilitation of the liberated bonded labourers is yet another factor which is required to be looked into in its proper perspective. Psychological rehabilitation must go side by side with the physical and economic rehabilitation.

During the recent years, the judiciary, particularly the Apex Court, has played an important role in making right to live with human dignity a reality for millions of Indians and has protected them from exploitation. The Supreme Court has not only given the widest possible meaning to the fundamental rights enshrined in articles 21 and 23 but also took into consideration the various factors which were responsible for the failure of various other social welfare laws.

The true scope and ambit of the expressions "beggar" and "other similar forms of forced labour" have been most eloquently explained by the Supreme Court in a monumental case of People's Union for Democratic Rights vs. Union of India. [51] In this case, the writ petition was filed by way of public interest litigation concerning the working conditions of workmen employed in the construction work of the various projects connected with the Asian games. In the petition, it was pointed out that the workers did not get the minimum wages as prescribed under the Minimum Wages Act, 1948. The violation of various other laws, such as Employment of Children Act, 1938; Contract Labour (Regulation and Abolition) Act, 1970; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 and Equal Remuneration Act, 1976 etc., was also alleged. [52]
Defending the public interest litigation, Bhagwati, J., pointed out that public interest litigation is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity and is totally different from the ordinary traditional litigation which is essentially an adversary in character. The rule of law, which is a part of "just, fair and reasonable procedure" under article 21 of the Constitution, does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. It was further pointed out that so far the courts have been used only for the purpose of vindicating the rights of wealthy and affluent. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the Court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate. Dwelling on the scope of article 23 of the Constitution, Bhagwati, J. speaking for the court observed:

(Article 23) is clearly designed to protect the individual not only against the State but also against other private citizens.

Article 23 is not limited in its application ....The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and beggar and other similar forms of forced labour" wherever they are found.

It was pointed out that the word beggar used in article 23 is not a word of common use in English language. It is a word of Indian origin which like many other words had found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word "beggar," but there can be no doubt that it is a form of forced labour under which a person is compelled to work.
without receiving any remuneration for it. It is thus clearly a form of forced labour. Now it is not only *beggar* which is prohibited under article 23 but also "all other similar forms of forced labour", whenever they are found. The learned judge observed:

This article (article 23) strikes at forced labour in whatever form it may manifest itself, *because it is violative of human dignity and is contrary to basic human values*. Explaining the meaning of "other similar forms of forced labour", the Court observed:

We do not think it would be right to place on the language of Art. 23 an interpretation which would emasculate its beneficial provisions and defeat the very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Art. 23 not with a view to imparting the particular characteristic of 'beggar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'beggar' is one form of forced labour, the Constitution makers used the words other similar forms of forced labour.

Another important question which arose before the court for consideration was whether there was any breach of article 23 when a person provides labour or service to the state or to any other person and is paid less than the minimum wage for it. Lamenting on this question, Bhagwati, J., (as he then was) observed:

That where a person provides labour or services to another for remuneration which is less than the minimum wage, the labour or service provided by him
clearly falls within the scope and ambit of the words "forced labour" under article 23.

What is prohibited under article 23 is "forced labour", that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through legal provisions such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Thus, the term 'force' was explained by the Court in the following words:

The word 'force' must, therefore, be construed to include not only physical or legal force but also force arising from compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wages.

From the above observations, it is clear that the Supreme Court has given the widest possible interpretation to the various phrases used in article 23 of the Constitution. This interpretation of the Supreme Court, it is submitted, would make right to live with human dignity, a living reality for millions of workers who are doing forced labour for one reason or the other.

In Sanjit Roy vs. State of Rajasthan, [53] the Supreme Court relied on the Asiad Workers case and held that the payment of wages less than minimum wage amounts to 'forced labour' and hence 'violates article 23 of the Constitution. The Court pointed out that no work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to state of helplessness on account of drought and scarcity conditions. The
State could not under the guise of helping persons extract work of utility and value without paying them the minimum wage.

In *Labourers Working on Salal Hydro-Project vs. State of J&K*, [54] the Supreme Court treated a letter addressed by Peoples’ Union for Democratic Rights and based on a news/report, as writ petition. In the letter it was alleged that the labourers coming from the different parts of the country to the site of Salal Hydro-project in the State of J&K were being exploited and they were being denied the right to live with human dignity. The Supreme Court directed the observance of the various labour laws and also pointed out that the minimum wages must be paid to the workmen directly without any deduction save and except those authorized by the statute.

*Bandhua Mukti Morcha vs. Union of India*, [55] is yet another landmark judgment of the Supreme Court where the bonded labourers have been protected from exploitation. In this case the petitioner was an organization dedicated to the cause of release of bonded labourers in the country. Justice Bhagwati, while describing the true condition of bonded labourers remarked that they are non-beings, exiles of civilization, living a life worst than that of animals, for, the animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry. But these outcasts of society are held in bondage, robbed of their freedom and they are consigned to an existence where they have to live either in hovels or under the open sky and be satisfied with whatever little wholesome food they can manage to get, inadequate though it be to fill their hungry stomachs. Not having any choice, they are driven by poverty and hunger into a life of bondage, a dark bottomless pit from which, in a cruel exploitative society, they cannot hope to be rescued.
In *Bandhua Mukti Morcha case*, the Supreme Court noticed the causes of failure of Bonded Labour System (Abolition) Act, 1976. In the present case, the State tried to escape the liability of releasing the bonded labourers by saying that there were no bonded labourers in the State of Haryana.[133] The petitioner made a survey of some of the stone quarries in Faridabad district and found that there were large number of labourers from different states of the country who were working under 'inhuman and intolerable conditions' and many of them were bonded labourers. The petitioner described in the letter, which was treated by the Supreme Court as writ petition, that there was violation of the various constitutional provisions and the statutes which were not being implemented or observed in regard to the labourers working in those stone quarries.

Thus, one of the major handicaps which impede the identification of bonded labour is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is, therefore, necessary to impress upon the administration that it does not help to ostrich-like bury its head in the sand and ignore the prevalence of bonded labour, for it is not the existence of bonded labour which is slur on the administration but its failure to eradicate it and moreover, not taking the necessary steps for the purpose of wiping out this blot on the fair name of the State is a breach of constitutional obligation.

The Supreme Court in *Bandhua Mukti Morcha case* also found that there was violation of the various social welfare laws by the State and the workers were being denied of their right to have 'just and humane conditions of work'. The Court observed:
The right to live with human dignity enshrined in article 21... Includes protection of health and strength of workers, men and women, and... Just and humane conditions of work and maternity relief.

Mere liberation of the labourers from bondage without making arrangements for their rehabilitation will serve no useful purpose and may even create a very real problem as to livelihood of the labourers so set free. There is a specific provision for the rehabilitation of the bonded labourers after their release from the bondage. [56]

**Neeraja Chaudhary vs. State of M.P.** [57] is a landmark decision of the Supreme Court on rehabilitation of the bonded labourers. The brief facts of this case were that the petitioner, a Civil Rights Correspondent of Statesman, wrote a letter to the Supreme Court pointing out that about 135 labourers were released from bondage in 1982 from Faridabad and they were brought back to their respective villages in Madhya Pradesh. But they were not rehabilitated even after six-months of their release and they were living on the verge of starvation. Justice Bhagwati, speaking for the Court observed:

*It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated.* The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy With a View to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution.

Thus, from the above observations of the Supreme Court, it is amply clear that it is not enough merely to identify and release labourers but it is
equally, perhaps, more, important that after identification and release, they
must be properly rehabilitated. Because without rehabilitation, they would be
driven by poverty, helplessness and despair into selfdom once again. Poverty
and destitution are almost perennial features of Indian rural life for large
numbers of unfortunate ill-starved humans in this country and it would be
nothing short of cruelty and heartlessness to identify and release bonded labour
merely to throw them at the mercy of the existing socio-economic system
which denies to them even the basic necessities of life such as food, shelter and
clothing. We, who have not experienced poverty and hunger, want and
destitution, talk platitudinously of freedom and liberty but the words have no
meaning for a person who has not even a square meal per day, hardly a roof
over his head and scarcely one piece of cloth to cover the shame.

Thus, the petitioner rightly urged in Neeraja Chaudhry case that failure
on the part of the state government to ensure the proper rehabilitation of the
freed bonded labourers amounted to violation of the fundamental right of the
bonded labourers to live with human dignity under article 21 of the
Constitution.

In Mukesh Advani vs. State of M.P., [58] a public interest litigation was filed
by one Mukesh Advani case, advocate, by addressing a letter to one of the
judges of the Supreme Court and annexing thereto a cutting from the Indian
Express dated 14 September, 1982, depicting the horrid plight of bonded
labourers working in stone quarries at Raisen in Madhya Pradesh. In the letter
it was also alleged that the working conditions of the workers were of the 18th
century vintage and not even a single legislation enacted for the welfare of
labour was implemented or respected.
As a part of the social action litigation this letter was treated by the Supreme Court as writ petition under article 32 of the Constitution. The Court directed the District Judge, Bhopal to ascertain the existence of bonded labour as it was alleged in the letter. The District Judge in his report submitted that there were no bonded labourers at relevant time but there was total absence of implementation of labour laws. Therefore, the Supreme Court concentrated in giving directions to the government for taking suitable steps for implementation of labour welfare legislations in their true spirit. The Supreme Court stressed that the labourers be protected against the unauthorized exploitation by paying less than the minimum.

In Shankar vs. Durgapur Project Ltd.,[59] Calcutta High Court held that the State cannot deprive a worker of decent standard of life, which under article 43 of the Constitution, the State should endeavor to secure. To do an act contrary to article 43, i.e., to deprive a person of decent standard of life would be volatile of article 21 of the Constitution. The court pointed out that compelling a person to live to 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 of robbing him of all his human qualities and graces, a process which is crueler than sending a man to gallows. To convert human existence into animal existence no doubt amounts to taking away human right to life, because a man lives not by his mere physical existence or bread alone but by his human existence.

In P. Siva swami vs. State of A.P.,[60] the Supreme Court once again stressed the need for effective rehabilitation of the released, bonded labourers. The Supreme Court pointed out that the financial assistance of rupees 738 per family of the freed bonded labour was certainly inadequate for rehabilitation. And unless there was effective rehabilitation, the purpose of the Bonded
Labour System (Abolition) Act, 1976 would fail and the steps taken by the Supreme Court is rendered ineffective and there would be mounting frustration.

In *P.Bhaskara.Vijayakumar vs. State*, [61] it was held that imposition of rigorous imprisonment with hard labour attached to it does not amount to extracting "forced labour" from prisoner. It is not contrary to article 23. However, prisoners would be entitled to be paid for their labour under article 21. The High Court accordingly directed the State to pay adequate wages.

In *Balram vs. State of M.P.*, [62] the Supreme Court once again stressed the need for rehabilitating the bonded labourers. In this respect the Supreme Court issued certain directions to the central government and its officials to release adequate funds to meet its liability under the scheme framed under the Bonded Labour System (Abolition) Act, 1976. The Court further directed that collector and such other officers who have been assigned the responsibility of supervising rehabilitation shall ensure that the full amount intended for the freed labourers reaches them.

In *Public Union for Civil Liberties vs. State of TN.*, [63] the Supreme Court noticed that no significant progress has been made by the authorities concerned and it is not unlikely that the attitude of the authorities concerned is not enthusiastic as one would expect in a matter of such significance. The Supreme Court once again issued certain directions for prompt compliance by the State governments. It was directed that bonded labour should be identified and suitably rehabilitated. Their existing debt should be extinguished. They should be provided employment as agricultural workers. As a part of a rehabilitation package, the Court directed to provide adequate shelter, food, education to their children and medical facilities to the bonded labour and their families. It
was further directed that regular inspection should be made by the Labour Commissioner and the report of the District Magistrate should be sent to the Supreme Court Legal Aid Committee. Criminal proceeding should be initiated against the employer contractor exploiting bonded labourers. Thus, from the analysis of various above mentioned cases it is evident that the judiciary has shown deep concern for the basic human rights of the bonded labourers and issued the suitable directions for ensuring the protection and promotion of their human right to live with human dignity.

(b) Protection of Children from Exploitation

Children as a class constitutes the weakest and most vulnerable and defenseless section of human society. It is also the duty of the State to protect and promote their human rights with a view to ensuring full development of their personality and with human dignity, otherwise, the right to life and liberty would become meaningless for them. In spite of the specific constitutional mandate that the tender age of the children is not to be abused and they are not to be forced by economic necessity to avocations unsuited to their age and strength [64] and that the children below the age of fourteen years of age are not to be employed in any factory, mine or other hazardous concern, the child labour exists in almost all parts of the country. Their tender age and strength is exploited. They are denied the right to live with human dignity. The judiciary in India has shown its deep concern for the human rights of these children. In People's Union for Democratic Rights v. Union of India case, the Supreme Court observed: "Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. ...This is a constitutional prohibition which even if not followed up by appropriate legislation, must operate propria vigore."

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The echo of this observation came again from the Supreme Court in *Labourers Working on Salal Hydro Project v. State of J&K case*, the Supreme Court once again held that "construction work" is a "hazardous employment" and no child below the age of 14 years of age be allowed to be employed in it. The Supreme Court did notice in this case that as long as there is poverty and destitution in our country, it will be virtually difficult to eradicate child labour. But if we want to ensure that children should also enjoy human rights, then an attempt has to be made to reduce, if not eliminate, the incidence of child labour, particularly from the hazardous concerns. Otherwise, the Constitution will have no meaning to these children.

In *M.C. Mehta vs. State of Tamil Nadu*,[65] the Supreme Court while keeping the interest of the children, as also the constitutional mandate in view held that employment connected with manufacturing process in the match factory is not to be given to children. They can, however, be employed in packing process and the packing must be done in area away from the place of manufacture. The Court also directed that at least 60 percentage of the prescribed minimum wage, for adult employee doing the same job, to be given to child in view of special adaptability of child's tender had to such work. Keeping in view the basic human rights of the children, the Court directed that all such children should be provided with facilities for recreation and medical attention and that they should be provided basic diet during the working period. Protection of children against moral and material abandonment is yet another constitutional goal, which has to be achieved before all children are given the right to live with human dignity. Children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. Social activists and the judiciary have contributed a lot in this sphere.
In *Lakshmi Kant Pande* vs. *Union of India*, [66] a letter was written by an advocate to the judges of the Supreme Court complaining about the malpractices by some social organizations and other Voluntary agencies engaged in offering Indian children in adoption to foreign parents. The Supreme Court treated this letter as a writ petition in the nature of public interest litigation. There was of uniform law governing the inter-country adoption. Only abortive attempts were made by the Parliament in 1972 and 1980 to enact the uniform law of adoption. After observing the absence of legal framework in the area of inter-country adoption and failure of the Parliament to enact law in this regard, the Supreme Court formulated the guidelines and norms which must be observed in permitting inter-country adoption. The guidelines and the norms for preventing the moral and material abandonment of children by going into the wrong hands were framed by the Supreme Court with such meticulous details which even a consummate draftsman would have, perhaps, missed. The anxiety of the Supreme Court in framing the detailed norms and guidelines was to protect and safeguard the interest and welfare of the children of the country and protect their human rights which are the eloquent aim of the various constitutional provisions.

Thus, the Supreme Court laid down a law [67] governing the inter-country adoption. In other words, the Supreme Court filled the vacuum created by the absence of any Parliamentary legislation in regard to the uniform adoption law. [68]

The Supreme Court has also shown its concern for the protection of children from exploitation in jails. In *Sheela Barse* vs. *Union of India case*, a writ petition by way of public interest litigation was filed under article 32 of the Constitution by a social worker seeking the release of children below the age of 16 years of age, detained in jails in different states of the country.
production of complete information of children in jails, information as to the existence of juvenile courts, homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure that children are properly looked after when in custody as also for a direction to the State Legal Aid Boards to appoint duty counsel to ensure availability of legal protection for children as and when they are involved in criminal cases and are proceeded against.

The Supreme Court with a view to protect children from exploitation in jails pointed out that "it is an elementary requirement of any civilized society and it has been so provided in various statutes concerning children that children should not be confined in jail because in carceration in jail has a dehumanizing effect and it is harmful to the growth and development of children.

In *Sheela Barse vs. Secretary, Children Aid Society*,[69] the petitioner had made grievance about the working of Observation Home managed and maintained by the Children's Aid Society which was registered under the Societies Registration Act, 1860. The Supreme Court observed: "Children in Observation Homes should not be made to stay for long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self-confidence and picking of humane virtues".

The Supreme Court while laying stress on the need to look after the various problems of the children pointed out that if there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children, who will be the citizens of tomorrow, in a proper way. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and the Government. The
Supreme Court observed: "Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up.

The Parliament also gave a clarion call and in pursuance of the Supreme Court judgments’ in Sheela Barse case, it enacted the Juvenile Justice Act, 1986. [70] In the prefatory note to the Statement of objects and reasons, it was stated that a review of the working of the existing Children Acts would indicate that much greater attention is required to be paid to children who may be found institutions of social maladministration, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal system and community based welfare agencies in the care, protection, treatment and rehabilitation of such juveniles. [71]

In S.C. Legal Aid Committee vs. Union of India [72] the Supreme Court again showed its concern for providing relief to delinquent children detained in jails. The State governments which had not framed rules to carry out purposes of Juvenile Justice Act, were directed to frame such rules before 7 April, 1989 and being them in force immediately. A Committee was also set up to make draft scheme for working out modalities for enforcing the provisions of the Act.
In Gaurav Jain vs. Union of India, [73] the Supreme Court showed its concern for the children born to prostitutes. In order to protect them from exploitation, the Court issued various directions including that these children be separated from their mothers and be allowed to mingle with other children so as to become part of the Society. The Supreme Court also constituted a Committee to examine this problem and asked the Committee to submit its report to the Court on the basis of which further orders could be made. In yet another case of Vishaljeet vs. Union of India, [74] in public interest litigation, the petitioner alleged the sexual exploitation of children and flesh trade. The petitioner sought directions to CBI to enquire into the matter. However, the Supreme Court held that CEI enquiry is neither possible nor practicable. The Court issued directions to State governments and Union Territories to prevent such exploitation in view of articles 23(1) and 39(f) of the Constitution.

In Union Carbide Corporation vs. Union of India, [75] the Supreme Court took cognizance of the possible impact of Bhopal gas leak disaster on persons and children born to exposed mothers who may become symptomatic in future. The Court directed Union of India to obtain appropriate medical group insurance cover to take care of compensation for such prospective victims. The Court also ordered the premium to be paid from settlement fund.

In Madan Gopal Kakkad vs. Naval Dubey, [76] the Court expressed its deep concern on the sexual assaults on female children and recommended that deterrent punishment should be awarded in such cases.

5.5 Right to Live in Healthy Environment

The Indian Constitution is perhaps one of the rare Constitutions of the world which reflects the human rights approach to environment protection through various constitutional mandates. [77] In India the concern for environment
protection has not only been raised to the status of fundamental law of the land, but it is also wedded with the human rights approach and it is now well settled that it is the basic human right of every individual to live in pollution free environment with full human dignity. The Constitution of India obligates the "State" as well as "citizens" to "protect" and "improve" the environment.

There is no doubt that living in a polluted atmosphere or environment is like dying every moment. The problem of environmental pollution has posed the highest threat to the very existence of human beings. After all it is an established fact that there exists a vital link between life and environment. The Permanent Peoples' Tribunal regards the "anti-humanitarian effect of industrial and environmental hazards not as an unavoidable part of the exiting industrial system, but rather a pervasive and organized violation of the most fundamental rights of humanity. For, most among them are the right to life, health, expression and access to justice.

Article 21 of the Constitution guarantees a fundamental right to life, a life of dignity, to be lived in a proper environment, free of danger of decease and infection. The talk of human rights and maintaining the dignity of every person would become meaningless unless they are secured with the minimum livable environment. The judicial grammar of interpretation has made "right to live in healthy environment" as the sanctum sanctorum of human rights.

_Ratlam Municipality vs. Vardichand (78)_ is a monumental judgment where the Supreme Court followed the activist approach and provided flesh to the dry bones of statutory provisions. In this case the residents of a locality within the limits of _Ratlam Municipality_ tormented by stretch and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under section 133 of Criminal Procedure Code to require the Municipality to
do its duty towards the member of the public. The Magistrate gave directions to Municipality to draft a plan within six months for removing nuisance. In appeal, Session Court reversed the order. The High Court approved the order of Magistrate. In further appeal, the Supreme Court also affirmed the order of the Magistrate.

The Supreme Court also rejected the plea of the Municipality of insufficiency of funds. The court pointed out that the financial inability cannot validly exonerate the Municipality from statutory liability and it has no juridical base. The court further observed: “Even as human rights under Part III of the Constitution have to be respected by the state regardless of budgetary provision”. [79]

The right to life and personal liberty includes the right to live with decency and dignity. In this context the court pointed out that the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature’s pressure, bashfulness becomes a luxury and dignity a difficult art. The court observed: “Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies”.

Thus, from the above mentioned observations of the Supreme Court it is evident that it impliedly treated the right to live in a healthy environment as a part of article 21.

R.I. and E. Kendra vs. State of UP. [80] is a landmark case which demonstrates the activist role of the Supreme Court with regard to environmental issues. In this case, the Supreme Court entertained environmental complaints alleging that the operation of lime-stone quarries in
the Himalayan range of Mussoorie resulted in degradation of the environment affecting ecological balance. The Supreme Court entertained the writ petition under article 32 regarding the environmental issues and ordered the closure of some of these quarries on the ground that their operation was upsetting the ecological balance. In other words, the Supreme Court read, and rightly so, article 48-A into article 21 of the Constitution and regarded the right to live in a healthy environment as a part of life and personal liberty of the people.

*M.C. Mehta vs. Union of India* [81] is yet another significant case where again the Supreme Court has considered the impact of polluting the healthy environment by poisonous gas leakage and thereby affecting the life and liberty of the people. This case came up before the Supreme Court as a result of the leakage of Oleum gas from the Shriram Chemical Plant in Delhi which affected the health of large number of people and even one person died. Applications were filed by the Delhi Legal Aid and Advice Board and Delhi Bar Association for the award of compensation to persons who were affected on account of escape of oleum gas and suffered harm to their life and liberty. A preliminary objection was raised by the learned counsel appearing on behalf of Shriram that since there was no claim for compensation originally made in the writ petition, so this should not be considered by the Court. The Supreme Court rejected the preliminary objection of the learned counsel and observed:

These applications for compensation are for the enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper technical approach which would defeat the ends of justice.... If this court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class or individuals who cannot approach the court for justice, *there is no reason why these applications for compensation which have been made for the*
enforcement of the fundamental right of persons affected by oleum gas leak under Article 21 should not be entertained. Thus, from the above observations of the Supreme Court, it becomes amply clear that the court treated the right to live in a healthy environment, as fundamental right under article 21 of the Constitution.

In T. Damodhar Rao vs. S.O. Municipal Corporation, Hyderabad, [82] Justice P.A. Chaudhry of Andhra Pradesh High Court observed:

"It would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Art. 21 of the Constitution embrace the protection and preservation of nature's gift without which the life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violation of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilage should also be treated as amounting to violation of Art. 21 of the Constitution".

In Kinkri Devi v. State of Himachal Pradesh, [83] the court pointed out that if effective steps for the protection of environment are not taken with the utmost expedition, there will not only be a total neglect and failure on the part of the administration to attend an urgent task in the national interest but also a violation of fundamental right under article 21 of the Constitution. The court further observed that the judicial organ of the state cannot remain a silent spectator if there is a complaint for environmental pollution. To ensure the attainment of the constitutional goal of the protection and improvement of environment and to protect the people inhabiting the vulnerable areas from the hazardous consequences, with due regard to their life, liberty and property, the
court will be left with no alternative but to intervene effectively by issuing appropriate writs, orders or directions.

In *L.K Koolwal vs. State*, [84] the Rajasthan High Court observed:

"*Maintenance of health, preservation of the sanitation and environment falls within the purview of Art. 21 of the Constitution* as it adversely affect the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked".

In *MC. Mehta vs. Union of India*, [85] which is popularly known as *Ganga Water Pollution* case, the Supreme Court considered the problem of pollution of Ganga Water by the affluent discharge from the tanneries. The Supreme Court directed the owners of the tanneries to establish the primary treatment plants so as to prevent the pollution of the Ganga Water which is being used by large number of people of the country. The polluted water affects the health and life of the people. The court observed that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish the treatment plants.

In *Charan Lal Sahu vs. Union of India*, [86] the Supreme Court while upholding the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 held:

In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under articles 21, 48-A and 51-A (g). It is the duty of the State to take effective steps to protect the guaranteed constitutional rights.

The above observations of the Supreme Court put it beyond doubt that right to live in healthy environment is our fundamental right under article 21 and has to
be read with article 48-A and 51-A(g) thereby putting Obligation on the State as well as citizens to protect and improve it.

In *F.K Hussain vs. Union of India*, [87] the Kerala High Court pointed out that the right to sweet water and the right to free air are attributes of the right to life, for, those are basic elements which sustain life itself.

In *Subhash Kumar v. State of Bihar*, [88] the Supreme Court once again reiterated:

> "Right to live is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life, in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life". In *MC Mehta v. Union of India case*, the Supreme Court took note of environmental pollution due to stone crushing activities in and around Delhi, Faridabad and Ballabgarh complexes. The court was conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Showing deep concern to the environment, the court reiterated that "every citizen has a right to fresh air and to live in pollution free environment."

Thus, the Supreme Court once again treated it as violation of article 21 of the Constitution and passed the order in absolute terms under article 32 directing the stone crushing unit's to stop their activities in those areas. The Court further directed the government to rehabilitate these stone crushers in "crushing zone" within the period of six months.
In *PA. Jacob vs. Supdt. of Police Kotchikulam* [89] the Court took cognizance of noise pollution when it observed: "Compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee of right to life under article 21. Right to life comprehends right to safe environment, including safe air quality, safe from noise".

In *M.C Mehta v. Union of India* case, the Supreme Court rightly pointed out that law is a regulator of human conduct, but no law can indeed effectively work unless there is an element of acceptance by the people in society. For this, the dissemination of information, which is foundation of a democratic system, is necessary. It is, therefore, necessary to keep the citizens informed about their duty as also about the Obligations of the State. Accordingly, the Court directed:

(a) To enforce as a condition of licence of all cinema hall storing cinemas and video parlors duty to exhibit free of cost at least two slides/messages on environment in each show undertaken by them.

(b) To show every day by cinema halls information film of short duration on environment and pollution.

(c) To telecast and broadcast interesting programmes of 5 to 7 minutes duration every day and a longer programme once a week by Doordarshan and All India Radio in the matter of environment and pollution.

(d) To make environment a compulsory subject in schools, colleges and universities for general growth of awareness. It is submitted that these directions are in consonance with Principle 10 of the Rio-Declaration of 1992 on Environment and Development which calls
on States to make information widely available so as to facilitate and encourage public awareness and participation.

In *Tarun Bharat Singh v. Union of India*, [90] the Supreme Court directed the State Government, in particular, Police Administration to provide protection to environmental activities against any physical threats by the vested interests and to ensure that none of the activities and workers of the petitioner are subjected to any intimidation and hindrance in their activity.

In *Dr. K.C Malhotra vs. State of MP*, [91] once again the Court reiterated that right to life under article 21 includes right to live with human dignity, health and bare necessities of life. To ensure public health and safety is the duty of the State under the constitutional mandate of articles 21, 39 and 47. In this case open drainage was endangering public health and the petitioner sought enforcement of measures to ensure public health and safety against the Municipal Corporation. The Court directed Corporation to take necessary measures to eradicate the menace caused by the open drainage.

Thus, from the perusal of the above mentioned cases it is evident that judicial activism has led to the development of a new "environmental human rights jurisprudence" in India. Justice Holmes has rightly remarked that "life of the law has not been logic", it has been experience and the judges of the Court are men and their heart also bleed when calamities like the Bhopal gas leak incident occur.

**Concluding Remarks**

The right to enforce Human Rights as provided under the Constitution of India is constitutionally protected. Article 226 empowers the High Courts to issue writs for enforcement of such rights. Similarly Article 32 of the Constitution
gives the same powers to the Supreme Court. A new approach has emerged in
the form of Public Interest Litigation (PIL) with the objective to bring justice
within the reach of the poor and the disadvantageous section of the society. In
the recent past the judges of the High Courts and the Supreme Court have from
time to time given far reaching and innovative judgments' to protect the
Human Rights. Public Interest Litigation has heralded a new era of Human
Rights promotion and protection in India. The greatest contribution of Public
Interest Litigation has been to enhance the accountability of the Governments
towards the Human Rights of the poor. Public Interest Litigation has
undoubtedly produced astonishing results which were unthinkable two decades
ago. Public Interest Litigation has rendered a signal service in the areas of
development of compensatory jurisprudence for Human Rights violation,
Environmental protection, bonded labour eradication and prohibition of Child
Labour and many others. A review of the decisions of the Indian Judiciary
regarding the protection of Human Rights indicates that the judiciary has been
playing a role of savior in situations where the executive and legislature have
failed to address the problems of the people. The Supreme Court has come
forward to take corrective measures and provide necessary directions to the
executive and legislature. However while taking note of the contributions of
judiciary one must not forget that the judicial pronouncements cannot be a
protective umbrella for inefficiency and laxity of executive and legislature. It is
the foremost duty of the society and all its organs to provide justice and correct
institutional and human errors affecting basic needs, dignity and liberty of
human beings. Fortunately India has pro-active judiciary. It can thus be aspired
that in the times ahead, people's right to live, as a true human beings will
further be strengthened. From the perusal of the above contribution it is evident
that the Indian Judiciary has been very sensitive and alive to the protection of
the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right to Life and Personal Liberty.

References


[2] Article 142 (1) of the Constitution provides: "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and until provisional in that behalf is so made in such manner as the President may by order prescribe."

[3] This expression has been borrowed from article 31 of the Japanese Constitution.


[34] A.I.R. 1980 S.C. 557


[43] A.I.R. 1989 S.C. 2039. See also Supreme Court Legal Aid Committee v. State of Bihar, (1991) 3 SCC 482 where failure and negligence to give proper medical aid to an injured person taken in police custody resulted in his death. The Court directed the State to pay Rs. 20,000/- as compensation to the legal representatives of the deceased; Rakesh Chandra Narayan v. State of Bihar, 1991 Supp (2) SCC 626.

[56] Section 14(b) and (c) of the Bonded Labour System (Abolition) Act, 1976.

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Article 39(e) of the Constitution of India.


Article 141 of the Constitution provides that "The law declared by the Supreme Court shall be binding on all courts within the territory of India".


This Act received the assent of the President on 1 December, 1986.


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A.I.R. 1987 S.C. 1086 (popularly known as Oleum Gas Leakage Case)