CHAPTER-VI

CONSTITUTIONAL REMEDIES AND
PUBLIC INTEREST LITIGATION
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6.1. General

The objective of inclusion of fundamental rights in the Constitution is not merely to provide security and equality to the citizens but also equality of justice and fair play. Abstract declaration of these paramount important rights is meaningless unless there is effective machinery for the enforcement of the rights.

In India Fundamental rights were made effective by Art 32 and 226. If there is no remedy there is no right at all. Article 32 it self is a Fundamental Right General declarations had not much value unless there existed the will and the means to enforce them. The Constituent Assembly showed the will to enforce the fundamental rights by providing means under Art 32 and 226 of the Constitution. Speaking on Art 32, the Drafting Chairman of the Indian Constitution described this Article as the very soul and heart of the Constitution, because it provided effective remedies against violation of Fundamental Rights and with out which the Constitution would be a nullity.¹

Only an impartial and independent judiciary can protect and provide equal justice without fear or favour. Justice is the very first objective provided in the Preamble of the Indian Constitution; justice not in general, but Justice of Social, Economic and Political. The primary objective of the judiciary is justice so the judiciary should bear the responsibility to secure and implement this social justice system and it should be free from all kinds of pressures and it should be left in an atmosphere of

independence. Article 50 of the Constitution provided that the State requires to separate judiciary from the executive.

The Constitution has given power to the Supreme Court under Art.32 and High Courts under Art 226 to issue writs or judicial processes such as *habeas corpus, mandamus, prohibition, certiorari* and *quo-warranto* in order to the enforcement of the fundamental rights against any authority in the state, at the instance of an individual whose right guaranteed under this Article has been violated.

It is recognized on all hands that access to Justice is one of the most basic Human Rights and without it the realization of many other human rights may become difficult and in response to the demand for access to justice for which millions of our people are constantly and continually clamouring with a view to protection against violation of their human rights.¹

6.2. Judicial Activism and Article 32

The powers of the Supreme Court for the protection of the Constitutional rights are of the widest amplitude therefore they have to exercise their Judicial powers for protecting the fundamental rights and liberties of citizens of the Country. Therefore in order to achieve this mission the judiciary has to exercise and evolve its jurisdiction with courage and vision².

In the early eighties a new class of litigation has developed which differs from traditional litigation in as much as there are no plaintiffs or

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¹ Emphasizing the need and importance of PIL Justice Bhagwati observed in an article entitled 'Human Rights and Democratisation of Remedies'-Indian Bar Review – Vol. 1 (94) 1983, p.593.

defendants nor State /Complainant v. accused, it is less expensive and more efficacious that is the public Interest Litigation or Social Interest Litigation.

There is little distinction between Public Interest Litigation (PIL) and Social Action Litigations. In the case of Public Interest Litigation the Collective rights of the public are affected and redress is sought for such injury and there may be no direct specific injury to any member of the public as such. eg: Shri Ram Foods and Fertilizer's (Oleum gas leakage) case. In the case of Social Action Litigation the petitions are made for the enforcement of the specific rights of a determinate class or group of people who are primarily injured by the impugned action. The injury suffered by members of this class is direct and redress is sought on their behalf because they are unable to approach the Court on account of indigence, illiteracy and, social and economic disability. For example: Workers in Stone-quarries (Bandhua Mukti Morcha's Case), inmates of Care Homes, under trial prisoners in jails1.

In Chiranjit Lal v. Union of India,2 the Supreme Court held that the Court aims at enforcing, no matter whether the necessity of such enforcement arise out of an action of the executive or the legislature but to enforce the fundamental right guaranteed by the court.

6.3. Original Judicial Remedies Process

Even prior to the Constitution the High Courts in the three Presidency Towns of Calcutta, Madras and Bombay had the power to issue prerogative writs subject to important limitations. But prior to the Constitution, neither in England nor in India (Dinboi v. Normal, A. 1946.Bom.) it was not possible to obtain a writ against an order on the

1. Agarwala, B.R.: Our Judiciary National Book Trust, New Delhi, India, 1993, pp. 175, 175
2. AIR 1951 SC 41
ground that the very law under which it has been made was void. Now this is possible because the Constitutionality of a law can now be challenged in view of Art.13 on the ground that it is unconstitutional.

**6.4. Principle of *locus standi***

It is an elementary principle that in order to justify the granting of the extraordinary relief under Art.32, the complainant's need of it and the absence of an adequate remedy at law must clearly appear\(^1\). The right to move Supreme Court is only available to those whose fundamental rights are infringed. The writ under which the remedy is asked under Art 32 must be correlated to one of the fundamental rights sought to be enforced and the remedy must be sought through appropriate proceedings.

The doctrine of "*locus standi*" which requires that only a person to whom a legal wrong is done or an injury is caused can approach the court for vindication of his rights or for redressal of his grievance.

Art 32(1) guarantees the right to move Supreme Court by 'appropriate proceedings' for the enforcement of the fundamental rights conferred by Part III of the Constitution. Clause (2) of Art 32 confers power on the Supreme Court to issue appropriate directions or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo-warranto and certiorari* for the enforcement of any of the rights conferred by Part III of the Constitution. Under clause (3) of Art 32 Parliament by law empower any other court to exercise within local limits of its jurisdiction all or of the powers exercisable by the Supreme Court under clause (2). Clause (4) says that the right guaranteed by Article 32 shall not be suspended except as otherwise provided for the Constitution.

**6.5. Meaning of the expression 'appropriate proceeding'.**

Under Art.32 (1) There is no limitation in regard to the kind of proceedings except that the proceeding must be appropriate. The object of clause (1) of Art 32 is to save the jurisdiction of the Supreme Court to issue the writs from legislature interference. It is by means of these very writs that the Supreme Court and the High Courts can invalidate a law, duly enacted by the legislature, which has transgressed a mandatory provision of the Constitution. This power is called the “Judicial Review”.

6.6. Judgments of Justice Bhagwati: Public Interest Litigation and Article 32 of the Constitution of India

Justice witnessed the real poverty and misery of the rural masses of the country when he was visited interior parts of the nation as the chairman of the Legal Aid committees and understood the hollowness of the justice administered in the courts. This experience had influenced to change his attitude towards law and administration of justice. He thought that justice would take within its sweep the masses who were victims of poverty and disease, misery, oppression and exploitation. In pursuit, a new idea was born in his mind that is social justice. It is necessary that the Judges should identify themselves with the misery and suffering of the people to ensure the social justice, is the opinion of Justice Bhagwati.

Justice found an apt solution that, it would be enough if the poor or the disadvantaged addressed merely a letter to the court setting out their grievances. To implement this idea Justice Bhagwati saw a beam of light shining bright through Art.32 of the Indian Constitution. He accepted and entertained letters from social action groups or persons and treated those letters as writ petitions. The social action groups, who had been wronged to brought in to the light the grievances of the poor but could not afford

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2. Durgadas Basu -Constitutional Remedies And Writs- Kamal Law House, Calcutta, 1994,

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legal representation. Under these circumstances thus, started the protocol of entertaining letter petitions from the public spirited citizens who sometimes relying upon investigation reports in the newspapers, some times out of their own experiences brought the cases of the poor before the Apex Court. But these social action groups or persons face problems when it came to production of evidence. These Commissions of Inquiry again were not to be found in so many words in Art.32 or Art 226 but the court has immense powers of application in the arena of dispensing justice. Further these Supreme Court and High Courts had not only power to enforce fundamental rights but also power coupled with a duty. In the above situations the court has established Commission of Inquiry to ascertain facts.

The principle of 'locus standi' now been considerably relaxed the Supreme Court of India and held that an unregistered association could maintain a writ under Art.32 for the redressal of common grievance.¹

Soon thereafter Maneka Gandhi's case, Justice had an occasion to deal with a case which had great import in it is the case of Hussainara Khatoon v. Home Secretary, State of Bihar². In the instant case the allegation is that there was large number of under trial prisoners kept in various jails for several years without trial in the State of Bihar. This was brought to the notice of the Supreme Court by a lady advocate based on a News Paper article claiming a writ of habeas corpus for the persons named in that News paper article. In the present case, the Apex Court through Justice Bhagwati ordered that all such persons whose names were submitted to the Court in the writ petition should be released forth with. Since speedy trial was held to be a fundamental right guaranteed Article

¹ In ABSK Sasngh (Rly) v. Union of India, Justice Krishna Iyer declared that access to justice through class actions, public Interest litigation and representative proceedings is the present Constitutional jurisprudence.
² AIR 1979 SC 1369
the Supreme Court considered its constitutional duty to enforce this right of the accused persons.

The leading case, through which *Justice* had an opportunity to explain the purpose and importance of public interest litigation, is the case of *S.P. Gupta & Ors Vs President of India & Ors*. In which pronouncing the leading judgment for a seven member Bench of the Supreme Court of India Justice has firmly stated that 'any member of the public having sufficient interest and has not acted with malafide or political motives can approach the Court for enforcing Constitutional or legal rights of other

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1. AIR 1982 SC 149
persons and redressal for a common grievance'. Thus the principle of 'locus standi' has been replaced by 'sufficient interest'.

Speaking for the majority Justice Bhagwati stated the liberalised rule as follows: "Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right and such person or determinate class of persons is by reason of poverty, helplessness of 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 or order by a writ, in the high court under Art.226 or in case of breach of any fundamental right to this court under Art.32. Where the poor and weaker sections of the society languishing in jails for many years without their trial, who are helpless victims of an exploitative society and who do not have easy access to justice, the Supreme Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. The Supreme Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by the Supreme Court prescribing the procedure for moving it for relief under

1. (The Supreme Court of United States relaxed the procedure of “locus standi” in Gideon’s Vs Wain Wright 372 U.S 335. In January, 1962 on the letter head of a Florida Division of Corrections, a hand written scrawl addressed to the Supreme Court of the U.S. (stated): “I, Clarence Earl Gideon, inform this Court that I am a pauper without funds or any possibility of obtaining financial aid, and I beg of this Court to listen and act upon my plea”. This letter was treated as a petition by the Supreme Court of the United States. This relaxation of procedure was on the right lines and rendered a valuable public Service. However it gave rise to grave abuse and violated the basic principle in the process of judicial administration and the process has been discontinued and now a post card or letter is treated as an ordinary petition).
Art 32, but it must not be forgotten the procedure is but a hand made of justice and the cause of justice may never be allowed to be wasted by any procedural technicalities. The Court will, therefore, unhesitatingly 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.

For the arrears of the cases pending before the Supreme Court because of the introduction of the PIL Justice response was: "It is true that there are large arrears of cases pending in the courts but that cannot be any reason for denying access to justice to the poor and weaker sections of the community. The time has now come, when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel heartless society for generations".

Thus it was, with this case the law-dispensers widened the scope and created gap for entry of the cases of poor litigants in to the courts. It is true that through this land mark judgment the Apex Court had thrown open the doors of the court to the person or class of persons who by reason of poverty, disability or in a social or economical disadvantageous position cannot approach the court for justice. The Supreme Court entertained petitions filed by any public spirited individual or any social action group acting bonafide enabling to approach the court for redressal of the grievance of those persons by expanding the doctrine of "Locus Standi".

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S.P. Gupta & Ors Vs President of India & Ors; AIR 1982 SC 149
In the case of *Peoples Union for Democratic Rights Vs Union of India* a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. The matter was brought to the attention of the Court by the first petitioner which is an organisation formed for the purpose of protecting democratic rights, by means of a letter addressed to Justice Bhagwati. That letter was based on a report made by a team of three social scientists who were commissioned by the first petitioner for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various *Asiad Projects* were working. There were number of workers including women and children employed by a contractor were working for the Asiad projects work in Delhi by accepting less than minimum wages due to their economic conditions. Since the letter addressed by the first petitioner was based on the report made by three social scientists after personal investigation and study, it was treated as a writ petition on the judicial side.

In the above context the Supreme Court through *Justice Bhagwati* held that ‘accepting less than minimum wages due to the economic compulsion amounts to forced labour’. And he directed the Government to take necessary steps for punishing the violation of fundamental rights of citizens guaranteed by Art. 23, by private individuals.

In this very case, Justice Bhagwati explained the nature of PIL in the following way: “There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the Court and adding to the already

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1. AIR 1983 SC 339
2. Peoples Union for Democratic Rights V Union of India : AIR 1983 SC 1473
staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is to our mind, a totally perverse view smacking of elitist and status quoits approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the downtrodden the have-nots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. 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 downtrodden, the ignorant and the illiterate and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgment delivered by this Court in Judges Appointment and Transfer case. Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. They have been crying for justice but their cries have so far been in the wilderness. They have been suffering injustice silently with the patience of a rock, without the strength even to shed any tears.

He added, with all the emphasis at our command that 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 where there is a dispute between two litigating parties,
one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. 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. The Rule of Law 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. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.

Again speaking on the issue of locus standi he held that, the Peoples Union for Democratic Rights had “locus standi” to file a petition for enforcement of various labour laws intended for the benefit of the workers and the court rejected the argument that entertaining of such PIL would create arrears of cases and therefore they should not be encouraged. Further he declared that “No State had the right to tell its citizens that because a large number of cases of the rich are pending in our courts we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford rich lawyers is disposed off”.

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Munna v. State of Uttar Pradesh's case the apathy of juvenile under trial prisoners came before the Supreme Court as a result of its notice to the State of Uttar Pradesh. The petitioners seek relief by this writ petition in respect of certain juvenile under trial prisoners in the Kanpur Central Jail. In the petition they alleged that, though there is a Children's Home in Kanpur these juvenile under trial prisoners who are more than 100 in number are lodged in the Kanpur Central Jail instead of being sent to the Children's Home and they are being sexually exploited by the adult prisoners. These allegations are based on a news report published in the issue of the Indian Express dated 2/12/1981 where a reference is made to a visit of Shri Madhu Mehta of the Hindustani Andolan to the Kanpur Central Jail incognito. Shri Madhu Mehta, according to this news report, found that young boys of 10 to 14 years were being supplied to convicts for their delectation and a boy named Munna whom he met was in agony because after the way he was used, he was unable to sit.

In the above state of affairs Justice Bhagwati observed that "We must investigate into this matter not only in the interest of fair administration of justice but also for enforcing the basic human rights of these unfortunate juvenile under trial prisoners who are alleged to have been the victims of sexual exploration. Juvenile delinquent is, by and large, a product of social and economic mal-adjustment. Even if it is found that these juvenile have committed any offences, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the jail. Moreover, the object of punishment being reformation, we fail to see what social objective can be gained by sending juveniles to jails where they would come into contact with hardened criminals and lose whatever sensitivity they may have to finer and nobler sentiments. That is the reason why Children Acts are enacted by States all over the country.

1. AIR 1982 SC 806 :: 1982-SCC-1-545
and the U. P. Legislature has also enacted the Uttar Pradesh Children Act, 1951. Since, according to the Report of the Sessions Judge, there were 7 juvenile under trial prisoners below the age of 16 years, that being the limit of age below which a juvenile would be regarded as a 'child' within the meaning of the Uttar Pradesh Children Act, 1951.

Yet, on the role of Magistrates in the state of UP he observed that “We would strongly impress upon the magistrates in the State of Uttar Pradesh....and what we say here must apply mutatis mutandis to the magistrates in the other parts of the country where the Children Acts are in force, that they must be extremely careful to see that no person apparently under the age of 16 years is sent to jail but he must be detained in a Children's Home or other place of safety. It is absolutely essential in order to implement the provisions of the Uttar Pradesh Children Act, 1951 that Children's Home or other suitable places of safety are set up by the government for the purpose of providing a place, of detention for children under the age of 16 years. No words we can use would be strong enough to convey our feelings in this respect. A nation which is not concerned with the welfare of its children cannot look forward to a bright future”.

Again in the case of Sanjit Roy v. State of Rajasthan, an important issue relating to the payment of wages being lower than the minimum wages to the person employed in Famine Relief Work was brought to the notice of the Apex Court through PIL. Wherein Justice ruled that, even as

1. The manner in which a child can be detained is prescribed by the Uttar Pradesh Children Rules, 1962 and in exercise of the powers conferred under sub-sec. (1) of S. 88 of the Uttar Pradesh Children Act, 1951.....Even where a child is found to have committed an offence of so serious a nature that the court is of opinion that no punishment which under the provisions of the Act it is authorised to inflict is sufficient. S. 32 provides that the offender shall not be sent to jail but shall be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the State Government. S. 33 sets out various methods of dealing with children charged with offences. But in no case except the exceptional ones mentioned in the Act, a child can be sent to jail.

2. AIR 1983, S.C 328
the State has taken their service or labour to help them to meet famine situation State cannot pay him less than minimum wages and it cannot take advantage of their helplessness.

Similarly in Bandhua Mukti Morcha v. Union of India,1 an organization dedicated to the cause of release of bonded labourers informed the Supreme Court through a letter that they conducted a survey of the stone quarries situated in Faridabad District of the State of Haryana, and found that there were large number of labourers working in these stone quarries under inhuman and intolerable conditions and many of them bonded labourers. The apex court was treated the letter as a writ-petition and appointed a commission consisting of two advocates to visit those stone quarries and make an Inquiry and report to the court about the existence of the bounded labourers.

In the instant case yet, Justice had an opportunity to explain the nature and purpose of PIL that, public interest litigation is not in the nature of adversary litigation but it is a challenge and opportunity to the Government and its officers to make basic human rights meaningful to the deprived sections of the community and to assure them social and economic justice which is the constitutional objective.

In Kadra Pehadiya v. State of Bihar2, where there are large number of prisoners in the State of Bihar who have been in jail for more than 12 months after the commitment of their cases to the court of sessions and there are also a considerable number of prisoners who have been in jail for more than 18 months without any enquiry or trial having commenced in the courts of Magistrates. By an order Justice directed the release of the boys detained in jail. Their acquittal highlights the tremendous amount of misery and suffering which these four young boys

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1. AIR 1984 SC 803
2. AIR 1981 SC 939 :: 1981-SCC (3) 671
who have been ultimately found to be innocent must have undergone in jail for a period of 8 years without anyone being there to look after them or to take care of their interest. Though the boys were released, the statements which have placed before the court by the State of Bihar and the High Court disclosed an alarming state of affairs so far as administration of justice in the State of Bihar is concerned.

*Upendra Baxi v. State Of Uttar Pradesh*\(^1\) is a case concerned to the Protective Home in Agra where abandoned women and girl children were kept leading inhuman life even they have no clothes to wear. Some of them were suffering with diseases being kept along with the healthy girls. Moved by these pathetic conditions two law professors, Upendra baxi and Lothika Sarkar of Delhi University filed this writ petition, learning through a newspaper filed this writ petition and came up for hearing before the apex court on 8/05/1981. The Supreme Court through Justice Bhagwati made an order giving various directions in order to ensure that the inmates of the Protective Home at Agra do not continue to live in inhuman and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution is made real and meaningful for them. He gave certain directions to the State government which is running the home, on the treatment meted out to the girl children and women in the Home and with regard to the adequate toilet facilities, hospital facilities and for providing proper clothing to the inmates.

In the case of *Lakshmi Kant Pandey v. Union of India*\(^2\)'s case, a writ petition was filed before the apex court on the basis of a letter complaining of malpractices indulged in by social organization and voluntary agencies in the work of offering Indian children in adoption to foreign parents. The allegation is that in the guise of adoption Indian children were not only

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1. 1983 SCC(2) 308

1. AIR 1984 SCC(2) 244 :: AIR 1984 SC 469

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exposed to dreadful journey to foreign Countries but also they become beggars or prostitutes for want of proper care and shelter

In the above context, Justice Bhagwati laid down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents.

Again in 1986, the same case has been brought before the apex Court for consideration in view of the difficulties faced by some agencies in implementing the judgment reported in AIR 1984 SC 469 the normative and procedural safeguards in the matter of Inter-country adoptions the Supreme Court in the present judgment have made certain classifications and alterations.

For the protection of the Indian children who were to be adapted to the foreigners Justice Bhagwati gave directions suggested to adopt a sympathetic and sensitive approach with in-depth understanding of the dynamics of human behaviour while scrutinising the application and observed that “the social or child welfare agency engaged in the work of placing children in adoption should not readily assume that children including cradle babies who are found abandoned are legally free for adoption. Such children must be produced before the Juvenile Court so that further inquiries can be made and their parents or guardians can be traced. In States where there is no Children Act in force, such children should be referred to the Social Welfare Department for making further inquiries and tracing their parents or guardians. This procedure should be completed at the latest within three months and no children who are found abandoned should be deemed to be legally free for adoption until the Juvenile Court or the Social Welfare Department declares them as destitutes or abandoned. It should also be impressed upon the Juvenile

Courts that when children are selected for adoption, release orders should be passed by them expeditiously and without delay and proper vigilance in this behalf must be exercised by the High Courts”.

Thus, Justice Bhagwati gave number of suggestions and directions to the concerned authority to be followed in the process of adoptions. This reveals the commitment and accountability he imbued as an eminent member of the Indian judiciary towards the public and humanistic persona of justice Bhagwati.

In the case of Rural Litigation and Entitlement Kendra Vs State of Uttar Pradesh1, the Court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. This matter was brought before the apex court by a PIL alleging that a large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in that area. The Court had appointed a committee for the purpose of inspection of certain lime stone quarries and the committee has suggested for the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein.

So this strategy of PIL facilitated to bring to the notice of the apex court a very much important, needy and timely concerned problem as the protection of ecological balance is a burning issue.

In Veena Sethi Vs. State Of Bihar2, Where he received a letter dated 15th Jan., 1982 addressed by the Free Legal Aid Committee, Hazaribagh to Justice Bhagwati which drew the attention of the Court to the atrociously illegal detention of certain prisoners in the Hazaribagh Central Jail for almost two or three decades without any justification.

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1. 1985 (2) SCC 431
2. AIR 1983 SC 339 :: 1982 SCC (2) 583
whateovers... and treating this letter as a writ petition, the Court issued notice to the State of Bihar for the purpose of ascertaining the facts in regard to these prisoners and then the court ordered for their release forthwith.

In the instant case with regard to the public interest litigation petitions, Justice Bhagwati observed that ‘there are some people who are critical of the practice adopted by this Court of taking judicial action on letters addressed by public spirited individuals and organisations for enforcement of the basic human rights of the weaker sections of the community. This criticism is based on a highly elitist approach and proceeds from a blind obsession with the rites and rituals sanctified by an outmoded Anglo-Saxon Jurisprudence. The most complete refutation of this criticism is provided by the action taken by the Court in this case’.

Again in the case of Bihar Legal Support Society Vs Chief Justice of India, Justice Bhagwati made it clear that the strategy of PIL has been evolved by this Court with a view to bringing justice within the easy reach of the poor and the disadvantaged sections of the Community.

In Shriram Food and Fertilisers' case, Justice Bhagwati has delivered a landmark judgment, the facts were that there was a leakage of Chlorine Gas from the plant, resulting in death of one person and causing hardships to the workers and residents of the locality due to the negligence of the management in maintenance and operation of the Caustic Chlorine of the company.

This matter was brought before the Apex Court through public interest litigation; the Supreme Court directed the company manufacturing lethal chemicals and gases posing danger to health and life of workmen

1. 1986 SCC (4) 767
2. MC Mehta v. Union of India, (1986) 2 SCC 176
and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. The court directed the management to deposit a sum of Rs. 20 lacs with the Registrar of the Court, by way of security for payment of compensation claims of the victims of Oleum gas leak. In addition a bank guaranty for sum of Rs. 15 lacs was also directed to be deposited.

In the case of *M.C.Mehta vs Union of India* the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, polluting the river Ganga. The matter was brought before the Court through a PIL by the petitioner, a social worker. While dealing with this case the Supreme Court further widened the scope of PIL, SIL under Art 32. Justice Bhagwati speaking for the majority laid down the following important guidelines:

(i) The poor in India can seek enforcement of the Fundamental Rights from Supreme Court by writing a letter to any judge of the court even without the support of an affidavit.

(ii) Under Art 32 the Supreme Court has power to grant remedial relief which includes the power to grant compensation in appropriate cases when the Fundamental Right of the poor and disadvantaged persons are violated. However, Art.32 cannot be used as a substitute for claiming compensation for the infringement of fundamental rights through the ordinary process of a Civil Court. It can only be done where the violation of fundamental right of poor is "gross and patent" and "affects persons on a large scale" or where it appears to be "unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantage position to seek remedy in the civil court.

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1. 1987 (4) SCC 463
(iii) The Court can appoint socio-legal commissions or devise any procedure and fore any tools it deems appropriate for the enforcement of fundamental rights of the poor.

While the writ petition for the direction to close the company’s unit producing dangerous gas was pending in the Court there was escape of Oleum Gas from one of its units. A writ petition was filed by the Delhi Legal Aid and Advice Board and the Delhi Bar Association for award of compensation to the persons who had suffered harm on account of escape of Oleum gas. But a preliminary objection rose that there was no claim for compensation originally made in the writ petition. This objection was turned down by Justice Bhagwati and held that while dealing with the application for compensation for enforcement of Right to life in Art. 21 the Court can not adopt a hyper technical approach which would defeat the end of justice.

The verdict of Bhagwati in this landmark judgment has opened the doors of the highest court of the nation for the poor, oppressed and the exploited community. The court has brought legal aid schemes to the door steps of the poor operating at the Central and State level.

In the case of Sheela Bares v. Union of India, the Apex Court has directed the Central Government to pay the petitioner, a social worker Rs. 10,000-00 for the expenses who has visited the parts of the country to verify whether the information submitted by the authorities regarding the children below 18 years of age detained in jails indifferent States of the Country was correct.

1. 1986 (3) SCC 596
X-Axis Years

Y-Axis Number of Cases

1968-78 Before Bhagwati Period
1978-88 Bhagwati Period
1988-98 After Bhagwati Period
1998-2008 After Bhagwati Period

Fig. 6.2 Year wise PIL cases filed in the Supreme Court and its progress
Despite the appreciation of Public Interest Litigation and its beneficial effects there is criticism on the strategy of Public Interest Litigation by many. It is said, that by entertaining violation of fundamental rights through a letter, the Court will be flooded with litigation resulting delay in deciding many other important cases. Secondly, it is pointed out that interference by the Courts through the sphere of Executive and Legislature is not justified as it is likely to cause conflict between the three organs of the Government. Thirdly, the Court has no capacity to enforce its orders and in many cases the conditions have not changed. Justice Bhagwati has already answered to these criticisms, while dealing with Peoples Union for Democratic Rights case and as regards the enforcement of the orders and direction of the Court, Art.144 is clear. Art.144 says that all authorities civil and Judicial in the territory of India shall act in aid of the Supreme Court. If any of these authorities fail to carry out the orders of the court, the court can punish them for the contempt of the court.

The Supreme Court now is ready to interfere under Art.32 wherever and whenever any injustice is done by the state action to the poor and helpless persons who can not approach the court. So we can say that Justice Bhagwati has generalised the technique of liberalized rule of ‘locus standi’ and he made a momentous social invention by accepting even letters from public spirited citizens and converting them into writ petitions.

Thus through this strategy of PIL facilitated in bringing to light the issues relating to environment protection ,social justice , fundamental rights economic issues and also matters involving national importance like elections and powers of Central Bureau of Investigation.
In *Vineet Narain Sharma V. Union of India*¹, where the matter was brought before the Court by way of public Interest Litigation the Apex Court issued directions to make the CBI independent to investigate crimes and corruptions at high places in public life.

Because of this Art.32 which is a corner stone in the Indian Constitution apart from the under privileged, poor, down trodden persons, under trail prisoners who were languished in the jails for years, children in jails, sexually abused women in protected homes etc, have been protected and the issues of national importance are brought in to light by this strategy of PIL².

*He* has championed the cause of workers and labourers in addition, women, children and weaker sections of the society. He is the champion of social justice system in India. *His* reputation and his impact through his Judicial and Legal Aid work is so enormous that the public response has been quite phenomenal, eg: a Village where the tribal people benefited from his judgment, renamed the village after him calling it BHAGAVATI PURAM³.

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¹ AIR 1998 SC 889  
² Professor Upendra Baxi, ex-Vice Chancellor of Delhi University referred to the letter petitions introduced by the Supreme Court as the epistolary jurisdiction. i.e. jurisdiction which is invoked by epistles to the court.  
³ The researcher collected the matter from the website on Justice P.N. Bhagwati through www.google.co.in