CHAPTER - II

BIOGRAPHY OF JUSTICE P.N. BHAGWATI
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2.1. General

Padma Vibhushan Hon'ble Justice Shri P.N. Bhagwati, former Chief Justice of India is one of those activist Judges in India and gave creative interpretation to the Constitution according to social needs of the common people. His creative judicial activism is fundamental to the evolution of contemporary Indian Jurisprudence.

About his activist approach he expressed in an article¹ that:

"The Supreme Court held that Legal Aid to the poor accused in a criminal trial is an essential requirement of reasonable fair and just procedure and therefore implicit in Art. 21... in another case the Supreme Court held that the right to life in Art.21 includes the right to live with human dignity and the right to livelihood. Originalists and strict literal constructionists were shocked at this, what they regarded as extravagant interpretation but in advanced the constitutional values and enhanced the protection of the people by limiting and structuring executive and legislative power".

2.2. Childhood, Education and Profession of P.N. Bhagwati as an Advocate.

The Hon'ble Justice Padma Vibhushan Sri Prafulla Chandra Natwarlal Bhagwati was born on December 21, 1921. Secured 2nd position in Matriculation in Bombay, graduated in Maths (Hons.) in 1st class from Elphinstone College, Bombay in 1941, appointed a fellow of the same college doing M.A. in Maths.

¹ Justice P.N. Bhagwati, C.J.I. What Judges should do? Times of India, Sept. 22nd 1986
Justice P.N. Bhagwati says, “It was a chance encountered with Mahatma Gandhi, the Father of the Nation that changed his destiny to be a lawyer and a judge. It was on the 7th and 8th of August, 1942 that the famous Session of the Indian Congress Committee took place at Gwalior Tank in Bombay. What Mahatma Gandhi said on that day made a profound impact on P.N. Bhagwati as it did on hundreds and thousands of other young men and women? He gave up studies joined the freedom struggle, went to jail for a month, and then hounded by the police, went underground for four months. He was then working in a socialist party founded by Arun Patwardhan and Aruna Asif Ali. Later on, following the foot prints of his father young Bhagwati drifted to the Government Law College, Bombay where he excelled as a 1st Class law student. By the time he graduated in Law his mind was made up to join the judiciary. The words of Plato kept ringing in his ears. If good people are not prepared to join politics, then they must be prepared to be governed by the bad ones. Says Justice Bhagwati, “I therefore said to myself that if good people do not join the bench, then the advocates must be prepared to argue before the bad judges”.

He was enrolled as an advocate of the High Court at Bombay on Feb.24, 1948 and practiced commercial company and constitutional cases while at the Bar before the High Courts and the Supreme Court of India from 1948 to 1960.

He became a judge of the Gujarat High Court on 21st July, 1960, and served as the Chief Justice of Gujarat High Court from 16th Sep. 1967 to 16th July, 1973, later became the Judge of Supreme Court of India in 1973, and elevated to the seat of Chief Justice of the Supreme Court of India.

India in 1985. After being served as its chief with his creative intellectual writings, especially on constitutional law, he was retired on December 21st, 1986.

Besides being judge and Chief Justice he held various distinguished positions in India and abroad. By the time justice became Chief of the Gujarat High Court; he has been appointed as chairman to give suggestions to the Gujarat Government on legal aid programmes in Gujarat, his each yearning to help the poor had become almost an obsession. At that time he went in to the interiors of the rural areas to see and understand the real India where he came face to face with stark poverty.

He has been a much invited keynote speaker at conferences around the world on Human Rights like, International Appellate Judges Conference held in Malaysia in 1987, the African Chief Justices Conference held in the 1986 and also 1988: the Australian Legal Convention in Perth in 1987: The Commonwealth Secretariat have also drawn on him to organize Judicial Colloquia on the Domestic Application of International Human Rights Norms, this Colloquia which have drawn considerable attention and led to significant follow through from Judges around the world1.

His contributions to Human Rights, Legal Aid and Law for the poor have also been recognized through his election as President of the World Congress on Human Rights (1989). He spent about one week at the Columbia University as the Samuel Reuben Fellow at the Columbia Law School and delivered Samuel Ruben Lecture on Judicial Activism and Public Interest Litigation. He has helped the Columbia Law School place a number of Human Rights Fellows in India in the past few years2. Besides,

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he prepared and submitted to the Government of India a Draft Refugees and Asylum Seekers Protection Act, 2000.

Apart from the above mentioned, he has also carried out several missions for the United Nations centre for Human rights, the common wealth secretariat, and the International commission of Jurists. His services have been utilised by several countries, including Mongolia, Cambodia, Nepal, Ethiopia, and South Africa in framing their constitutions and particularly the chapters on human rights. He was a member of the Goldstone Commission of inquiry in South Africa. He was also involved in finalising the draft manual for training the Judges in human rights prepared by the Office of the High Commissioner for Human rights1.

2.3. Role of Justice Bhagwati under various Committees and Commissions.

Justice had been appointed as Chairman for various Committees and Commissions by the State Governments and Government of India viz., Legal Aid Committee by Gujarat Government, Committee for Implementation of Legal Aid Scheme i.e.,CILAS, Justice PN Bhagwati Committee on Takeovers2 and now he is heading the Commission, the International Independent Group of Eminent Persons3 for observing the functioning of the Presidential Commission of Inquiry into alleged serious violations of Human Rights in Sri Lanka.4

2.3.1. Legal Aid

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1. Justice P.N.Bhagwati, www.google.co.in/search from a website
2. www.sebi.gov.in
3. IIGEP
4. July 01, 2007, the Times of India.
The concern for the poor has been a part of legal development in all democratic and progressive societies. This manifested itself in the passing of a variety of welfare laws and allocation of funds for welfare activities. The non-use or limited use of the legal system by the poor and perhaps the over-use of it against the poor is the structure and organization of the legal profession itself.

2.3.1.1. Gujarat Legal Aid Committee Report\(^2\), 1971

Today, we find that the law of supply and demand operates in all its naked fury in the legal profession. There is no limit to the fees of lawyer from his client. . . . This directly leads to inequality in the quality of legal representation as between the rich and the poor. . . . Litigation is still trial by battle under another form: counsel being the champions and purses the weapons...

In any dispute between rich and the poor, between the haves and have-nots, the former has distinct advantages over the latter since he can afford the best lawyer while the other cannot. . . . Not only would there be inequality in the competence of legal representation but in many cases there would not be available to the poor that care and attention in legal representation, which would be available to the rich by reason of their superior financial resources.

2.3.1.2. The National Juridicare Report\(^1\) – 1978


\(^2\) Report of the Legal Aid Committee1971, (which was headed by Justice Bhagwati and submitted to the Government of Gujarat, 1971); p. 194.
To make more focused recommendations regarding legal aid schemes, the government of India appointed in May, 1976 another committee with Shri Justice P.N.Bhagwati as chairman and Shri Justice V.R.Krishna Iyer as member. Traditionally, legal aid to poor has been taken to denote the services provided to the poor in the administration of justice to give formal equality which included payment of court fees lawyers’ fees and incidental costs of litigation. Rejecting this approach, in the development of legal aid in India, the National Juridicare Report advocates a new philosophy. Its major recommendations are to setting up State Legal Aid Boards and Legal Aid Committees at District, Taluks / Tehsils / block levels as well as at Supreme Court and high court levels.

2.3.1.3. Committee for Implementation of Legal Aid Schemes

(CILAS)

While 1970’s witnessed an intense interest at government level on the setting up of commissions and committees for reporting on legal aid policies and programmes, the beginning of 1980’s heralded the introduction of steps to implement legal aid schemes with government funding. The adoption of free legal aid as a directive principle and the interpretation that right to counsel at state expense in criminal proceedings is a fundamental right of an indigent accused by the Supreme Court led to a situation in which governments could not delay the introduction of legal aid.

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2. Committee for Implementation of Legal Aid Schemes,(CILAS) setup under a Govt. of India Resolution on 26th Sept. 1980.
3. Article 39-A inserted by.42nd Amendment to the Constitution in 1976; Article 39-A directs the State to provide for Equal Justice and Free Legal Aid to the poor under the Directive Principles of State Policy of the Constitution of India.
aid by appointing committees one after the other. At this juncture Justice Bhagwati had been appointed as a Chairman for various committees.¹.

The Union Government found the steps taken by States too inadequate to meet what was recommended by the National Juridicare Report and therefore setup in October, 1980, a committee for implementation of Legal Aid Schemes with no less a person than supreme court judge Mr. Justice P.N. Bhagwati as its Chairman, with an object to inject equal justice in to legality through a dynamic scheme of legal aid.

The concept of legal aid adopted by CILAS for implementation throughout the country is the dynamic and social-justice oriented scheme. It (CILAS) recommended for PIL or Social Action Litigation. Based on Justice Bhagwati reports recommending Legal Aid Schemes in India, the Legal Services Authorities Act, 1995 was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was enacted to effectuate the constitutional mandate enshrined under Articles 14 and 39-A of the constitution of India. The object is to provide ‘Access to Justice for all’, so that justice is not denied to citizens by reason of economic or other disabilities.

2.4 Justice Bhagwati’s passion for the protection of Human Rights

Justice Bhagwati’s association with Mahatma Gandhi in 1940’s perhaps made him Judge with much humanistic and penchant values.

Justice Bhagwati said that “If we judges want to advance human rights jurisprudence, it is essential that we adopt an activist, goal-oriented approach and that, we creatively build up our national jurisprudence by incorporating into it the international human rights norms which have


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received broad acceptance by the entire international community. There is a considerable body of human rights jurisprudence evolved by United Nations Human Rights Committee, the European Court of Human Rights and the national courts of many countries around the world which can afford guidance to us in building up our own human rights jurisprudence...Human rights in all our countries will be safe for so long as we are deeply committed to human rights and imbued with the spirit of international human rights norms1.

While dealing with bonded labourer's case2 Justice Bhagwati observed thus: "this neglected and forlorn species of Indian humanity.... exiles of civilization, living a life worse than that of animals, for the animals are at least free to roam about as they like and... 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".

2.4.1. Justice P. N. Bhagwati as Vice - Chairman of United Nations Human Rights Committee.

Justice P. N. Bhagwati, as human rights observer visited the detention centre for asylum-seekers, Woomera, Australia, in May 2002 on behalf of UN High Commissioner for Human Rights. He said in the report: that "They were prisoners without having committed any offence. Their only fault was that they had left their native home and sought to find

1. [Quoted from "Fundamental Rights in their Economic, Social and Cultural Context", a paper by Mr. Justice P.N.Bhagwati in the Second Judicial Colloquium On 'The Domestic Application Of International Human Rights Norms' held in Harare, Zimbabwe, on 19-22 April, 1989 and published in Developing Human Rights Jurisprudence, Volume 2- pp.79&84.]

2. Bandhua Mukti Morcha V. Union of India- AIR 1984 SC 803
refuge or a better life on Australian soil." "From a human rights point of view, the detention of children in the context of immigration procedure is certainly contrary to international standards."

2.5. Justice Bhagwati's Concept and Strategy of Public Interest Litigation

The PIL has developed its institutional roots by the judgment of the Supreme Court in SP Gupta's case and prior to that Justice Bhagwati emphasised at many occasions about the need and implementation of Public Interest Litigation. While dealing with the Asiad Project Worker's case 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. It 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.

With regard to the rule of law, he opined that, "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".

1. www.newsindia-times.com
2. People's Union for Democratic Rights V. Union of India - AIR 1983 SC ...(also called as Asiad Project Worker's case)
3. People's Union for Democratic Rights V. Union of India - AIR 1983 SC ...(also called as Asiad Project Worker's case)
Bhagwati is instrumental in implementation of Legal Aid Schemes throughout India uniformly. It is through public interest litigation that not only the problems of the poor but also the issues involving national interests like corruption on the part of Governments and its servants are now coming to the forefront. Access to justice is one of the most basic Human Right and without its realisation many other Human Rights may become difficult.

Public Interest Litigation in India can prove to be the glory of our legal and judicial system if it is used cautiously and sparingly after careful study and research. It will always strive to demonstrate that law is not necessarily a class weapon used by the rich to oppress the poor through the simple device of making justice too expensive.

2.6. Awards and Honours

Justice has been involved in several public activities – he has been a member of the Experts Committee of the ILO, Committee of experts in the appreciation of Conventions and Recommendations of the ILO - Executive Committee of International Society of Labour Laws and Social Security, Commonwealth Legal Education Association ,Member of Human Rights Committee of International Law Association, Chairman of Editorial Board of India Council of Social Science Research for Encyclopaedia of Social Legislation and he was also associated with the Central University of Hyderabad as its Chancellor.

The most outstanding feather in his cap came with the appointment as member of the Permanent Court of Arbitration, Hague. Yet another honour also stood eloquently in tow. As the first Indian to have been appointed member of H.R. committee of the U.N. in Sep. 1994, he is to hold the post for four years. He won laurels for India when at the very first
meeting of the Committee held in New York in March 1995\textsuperscript{1}; he was elected to the Vice-Chairman thereof. \textit{Now he is the Vice-Chairman of the United Nations Human Rights Committee. He has been heading the International Group of Eminent Persons for observing peace process in Sri Lanka as its Chairman}\textsuperscript{2}.

Honours and awards have been bestowed on Justice Bhagwati time and again, the \textit{Bharat Gaurav} Award, the \textit{Vijaya Ratna} and the \textit{National Citizen} Award in 1987 are some of those awards for eminent contribution to the Indian Jurisprudence\textsuperscript{3}.

Under the chairmanship of Justice P.N.Bhagwati\textsuperscript{4} a jury committee was formed to select recipients for the annual awards for excellence to recognize outstanding individuals, who were working to improve the quality of life and reduce sufferings of disadvantaged populations. And some other organisations were also appointed Justice P.N. Bhagwati as jury member\textsuperscript{5}.

Numerous documentaries have been produced on him including one where he is one of six outstanding Indians. He has been the most visible member of India’s Judiciary since Independence. He has been addressing himself to the social action groups engaged in the betterment of the social and economic conditions of the poor and disadvantaged. His reputation and his impact, through his judicial and legal aid work is so enormous that the public response has been quite phenomenal e.g. a

\textsuperscript{1} Poornima Advani: Indian Judiciary - A Tribute; Harper Collins Publishers ,India, 1997,p,4
\textsuperscript{2} www.google.co.in
\textsuperscript{3} Poornima Advani: Indian Judiciary - A Tribute; Harper Collins Publishers ,India, 1997,p, 5
\textsuperscript{4} www.direct relief.org
\textsuperscript{5} For example, Golden Peacock awards for excellence in the Industrial field.
Village, where the tribal people benefited from his judgment, renamed the village after him calling it “Bhagwati Puram” 1. A convention of social activists in India awarded him to honorific award: Pride of India (1988).

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1 The researcher has collected the information through internet from the website on Justice P.N. Bhagwati.