CHAPTER - IV

JUSTICE DELIVERY SYSTEM: THE ROLE OF THE SUPREME COURT
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This chapter focuses on the functional aspects of 58 years of 'Justice Delivery System in India'. In this chapter, an assessment has been made as to the contribution of the Judiciary especially the Supreme Court in achieving the objectives enshrined in the Constitution through progressive and liberal interpretation of the various provisions of the Constitution. Right from its inception, the Supreme Court has discharged a multifaceted role. In the first place, it has acted as the custodian of the Indian Constitution. Secondly, it has exercised judicial control over the other two organs of the government i.e. the Executive and the Legislature. Thirdly, it has acted as a protector and the guardian of Fundamental Rights of the citizens. It has widened the scope of Fundamental Rights, especially Article 21 of the Constitution and it has also been seeking to enforce Fundamental Rights by integrating the Directive Principles with Fundamental Rights.

4.1 SUPREME COURT AS CUSTODIAN OF THE INDIAN CONSTITUTION

A constitution is a fundamental document governing the subjects of a state. It contains the organizational structure of a state, functions, powers and duties of its organs and basic rights of the people. The Indian Constitution is a unique document on which the democracy, the life of our nation has been founded. It is so significant that anything coming in conflict with or repugnant to this, can not stand the test of accepted notions of justice, and therefore, is declared void. Parts III of the Indian Constitution Contains Fundamental Rights granted to the citizens of India. The history of the past 58 years of the Indian republic has witnessed the emergence, sustenance, growth and progressive development of the Constitution. In the initial years, our country required large scale changes as well as regulations in all spheres of national life. Therefore large scale reforms in the Zamindari laws were introduced.
from time to time. When these were challenged in the Supreme Court the Court struck down some of them on the ground that they were inconsistent with the provision of the constitution. Thus a conflict between the representative of the people i.e. Parliament and the epitome of justice i.e. the higher Courts, emerged particularly with regard to the power of Parliament to amend the Constitution India. This conflict ultimately resulted in the laying down of the basic structure theory, which concretized, in no uncertain terms, the spirit and soul of the constitution. For convenience, the role of Supreme Court in justice delivery system can be studied under the following stages:

4.1.1. PRE-GOLAK NATH STAGE- During this phase, two prominent cases reached the Supreme Court for adjudication.

i. Shankri Prasad Case (1951)
ii. Sajjan Singh Case (1967)

(i) Shankri Prasad Case: 1
In this case Supreme Court held:
i) That Article 368 does not merely laid down procedure but it also confers power on the parliament to amend the Constitution.
ii) That the power to amend the constitution is constituent power and not a legislative power.
iii) An amendment of court is allowed under Article 13 (2) Since it is not made in the exercise of legislative power.

AIR 1951 SC 450 in this case, the question for consideration before the Supreme Court was whether the Constitution (first amendment) Act, 1951 seeking to curtail the right to property guaranteed by Article 31, was constitutionally valid. The argument put forward against the validity of such amendment as would violate any of the fundamental right was, the word law in Article 13(2) prohibited enactment of a law infringing or abrogating any Fundamental Right. The word ‘law’ in Article 13(2) included any law, even a law amending the Constitution and, therefore, the validity of such law could be assessed with reference to Fundamental Rights which it could not infringe. Adopting a literal interpretation, the Court rejected the argument and held that Article 13 referred only to legislative law i.e. an ordinary law made by a legislature but not the constituent law i.e. law made to amend the Constitution under Article 368. Thus under Article 368, the Parliament can amend any parts of the Constitution, including the Fundamental Rights.
vi) An amendment of court is valid even if it infringes any of the Fundamental Right. Thus, the court upheld the 1st amendment of the constitution even though it amended various fundamental Rights.

(ii) **Sajjan Singh Case**

The validity of the Constitution (17th Amendment) Act, 1964 was questioned in Sajjan Singh vs State of Rajasthan. The challenge was not against the power of the Parliament to amend the Fundamental Rights, but on procedural non-compliance. It was contended that since the 17th Amendment (it added 44 Acts to the 9th Schedule) was likely to affect the powers of the High Court under Article 226, it has attracted the proviso to Article 368 and as impugned amendment has not been ratified by half of the State legislatures, it was invalid. Rejecting the contention, the Supreme Court held that the impugned Amendment did not attract the provisions of clause (b) of the proviso to Article 368. The Court observed that the impugned Act did not purport to change the provisions of Article 226, and that it could not be said even to have the effect directly or in appreciable measure. Referring to Article 368, the Supreme Court expressed its full concurrence with the decision in Shankari Prasad vs Union of India and laid down that Article 13(2) did not apply to the amendments to the Constitution made under Article 368.

Thus the Supreme Court followed a pedantic and narrow approach and upheld the supremacy of the power of parliament to modify, vary or amend any part and provision of the Constitution.

4.1.2. **THE GOLAK NATH STAGE**- Then came the landmark judgement in Golak Nath vs. State of Punjab.

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2 AIR 1965 SC 845
3 As these 44 Acts were added to the 9th schedule, the High Courts, were excluded from looking into the constitutionality of these laws as a result of Article 31-B.
4 AIR 1951 SC 450
5 AIR 1967 SC 1643 In this case, the constitutional validity of the 1st Amendment, 1951, 4th Amendment, 1955 and 17th Amendment, 1964 was questioned. The petitioners - the son, the daughter and grand-daughter of one Henry Golak Nath who died in 1953,
The Supreme Court, by a majority of 6-5, prospectively\textsuperscript{6} Overruled its earlier decision in Shankari Prasad’s and Sajjan Singh’s cases and held that Parliament has no power, from the date of this decision, to amend Parts III of the Constitution so as to take away or abridge the Fundamental Rights the Chief Justice said that the Fundamental Rights are assigned a transcendental place under our Constitution and therefore, they are kept beyond the reach of parliament.\textsuperscript{7}

Thus the supremacy of Parts III was upheld and the Parliament was held to be not entitled to amend Part III of the Constitution.

\textbf{4.1.3. 24\textsuperscript{th} And 25\textsuperscript{th} AMENDMENT STAGE}

A. 24\textsuperscript{th} Constitutional Amendment

The decision of the Supreme Court in Golakh Nath’s Case was not acceptable to the Parliament. Therefore in order to nullify its effect, the constitutional (24\textsuperscript{th} Amendment) Act, 1971 was enacted. It brought the following changes with regard to the amending power of Parliament.

challenged the validity of the Punjab Security of Land Tenures Act, 1953 where under a part of their land was declared surplus to be acquired by the state. They alleged that provisions of the Act, under which the said area was declared surplus, infringed their fundamental rights secured by Article 19 (1) (f) and 31(2) and Article 14. As the Punjab Security of Land Tenures Act, 1953 was added to the 9\textsuperscript{th} Schedule by the Constitution (17th Amendment) Act, 1964, the petitioners sought a direction from the Supreme Court for striking down the Constitution (1\textsuperscript{st} Amendment) Act, 1951, The Constitution (4\textsuperscript{th} Amendment) Act, 1955 and the Constitution (17\textsuperscript{th} Amendment) Act, 1964 so far as they affected their fundamental rights.

The Court applied the doctrine of prospective overruling and held that this decision will have only prospective operation and therefore the 1\textsuperscript{st}, 4\textsuperscript{th} and 17\textsuperscript{th} amendments will continue to be valid. It means that all cases decided before the Golak Nath case shall remain valid. The doctrine of Prospective overruling envisages that a well established Precedent may be overruled from the future date and not retrospectively.

The minority, however, held that the word ‘law’ in Article 13(2) referred to only ordinary law and not a constitutional amendment and hence Shankari Prasad and Sajjan Singh’s cases had been rightly decided. According to them, Article 368 deals with not only the procedure of amending the Constitution but also contains the power to amend the Fundamental Rights.

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(i) It was inserted in clause (4) of Article 13 that ‘nothing in Article 13 shall apply to any amendment of the Constitution under Article 368;’

(ii) The heading of Article. 368 replaced as, ‘Power of Parliament to amend the Constitution and procedure therefor;’

(iii) Parliament was given the constituent power to amend, by way of addition, variation or repeal, any provisions of the Constitution including the fundamental rights.

(iv) The President will give assent to the Constitution (Amendment) Bills after they are passed by the Parliament and

(v) ‘Nothing contained in Article 13 applies to an Amendment made under Article 368.’

B. 25th Constitutional Amendment

The Twenty-fifth Amendment contained three significant provisions. First, it amended Article 31(2) and provided that anyone’s property may be acquired on payment of an “amount” instead of “compensation”. The intention was that the citizen’s right to property should be transformed into the State’s right to confiscation and the State should be able to deprive anyone of any property in return for any amount payable at any time on any terms; and the executive action, however arbitrary or irrational, should not be subjected to the Court’s scrutiny. Such State action may have a direct impact on any of the other fundamental rights, the exercise of which would be impeded or negatived by the deprivation of property without compensation, the only exception being the case of educational institutions dealt within the proviso to Article 31(2). Publishers may be deprived of their printing presses and buildings, trade unions of their properties, professional men of their professional assets, all without compensation, and thus the fundamental rights to freedom of speech, to form unions, and to practise any profession,—guaranteed by Article 19(1) (a), (c) and (g)—can be eroded or extinguished. The amended Article 31 has nothing to do with concentration of wealth, and permits any common citizen’s property, however small in value, to be acquired by the State without the payment of what would be compensation in the eye of the law.
Secondly, the Supreme Court had held in the Bank Nationalisation case\(^8\) that the power of acquisition or requisition envisaged by Article 31(2) was subject to the citizen's right to acquire, hold and dispose of property under Article 19(1) (f) which, in its turn, was subject to reasonable restrictions in the interests of the general public under Article 19(5). The Twenty-fifth Amendment enacts that Article 19(1) (f) would be inapplicable to acquisition or requisition laws. Since all reasonable restrictions in the public interest are already permitted under Article 19(5), the only object of making Article 19(1) (f) inapplicable would be to enable acquisition and requisition laws to contain restrictions and procedural provisions which are unreasonable or not in the public interest. It is impossible to perceive the social content of a law which\(^9\) is not reasonable or not in the public interest.\(^9\)

Thirdly, the Twenty-fifth Amendment inserted Article 31C which provides that "no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19 or 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy".

The directive principles of State policy set out in Article 39(b) and (c) deal with the entire economic system, and, therefore, countless categories of law can claim the protection of Article 31C since most laws can be related to the economic system in one way or another.


\(^9\) After the Twenty-fifth Amendment, any law for requisitioning or acquiring property may be passed with an express provision which violates the rules of natural justice. The Land Acquisition Act can be amended to provide expressly that any man's land or house can be acquired without any notice to the owner to show cause against the acquisition or to prove what "amount" should be paid to him for the property acquired. In fact, many industrial undertakings have been nationalised overnight by Ordinances which fixed, without any notice to anyone, ridiculous amounts payable by the State.
4.1.4. KESAVANANDA BHARATI STAGE

The question of amendment of Fundamental Rights came before the Court once again in the Kesavananda Bharati vs State of Kerala. The Court by majority ruled that the Parliament is competent to amend the Fundamental Rights under Article 368 Subject, however, to the doctrine that basic Structure of the constitution cannot be destroyed.

In this case the matter was heard by a bench consisting of all the 13 Judges of the Court. Eleven opinions were delivered by the Judges on April 24, 1973.

(a) The Court now held that the power to amend the Constitution is to be found in Article 368 itself. It was emphasized that the “provisions relating to the amendment of the Constitution are some of the most important features of any modern Constitution”.

Hegde and Mukherjea, JJ., found it difficult to believe that the constitution makers had left the important power to amend the constitution hidden in Parliament’s residuary power. On this point, therefore, the views expressed in Shankari Prasad and Sajjan Singh were endorsed and the view expressed in Golak Nath that the power to amend the constitution was not to be found in Art. 368 was overruled.

(b) Further, the Court recognized that there is a distinction between an ordinary law and a constitutional law.

HEGDE and MUKHERJEA, JJ., stated in this connection: “An examination of the various provisions of our Constitution shows that it has made a distinction between ‘the Constitution’ and ‘the laws’.” It was asserted that the constitution-makers did not use the expression “law” in Article 13 as including “constitutional law”. This would thus mean that Article 368 confers power to abridge a

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10 AIR 1973 SC 1461. In this case, as could be expected, the constitutional validity of both the Amendments i.e. (popularly known as Fundamental Rights Case). 24th and 25th Amendments was challenged in the Supreme Court.

11 Because Golak Nath, a decision by a Bench of 11 Judges was under review.

12 Ibid.
Fundamental Right like any other part of the constitution. To this extent, therefore, Golak Nath was now overruled.

(c) But Kesavananda did not concede an unlimited amending power to Parliament under Article 368. The amending power was now subjected to one very significant qualification, viz., that the amending power cannot be exercised in such a manner so as to destroy or abrogate the basic or Fundamental Features of the Constitution. A constitutional amendment which offends the basic structure of the Constitution is ultra vires.

What then constitute the basic structure or features of our constitution? Sikri, C.J. observed:

"The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the constitution remains the same. The basic structure may be said to consist of the following features:

- Supremacy of the Constitution.
- Republican and democratic form of government.
- Secular character of the Constitution.
- Separation of powers between the legislature, the Executive and the Judiciary.
- Federal character of the Constitution."

The above structure is built on the basic foundation, i.e. the dignity and freedom of the individual. This is of supreme importance. This cannot, by any form of amendment be destroyed. The above foundation and the above basic features are easily discernable not only from the preamble but the whole scheme of the Constitution.

Shelat and Grover, J.J. observed:

'The basic structure of the Constitution is not a vague concept and the apprehension expressed on behalf of the respondents that neither the citizen nor Parliament would be able to understand it are unfounded. If the historical background, the preamble, the entire scheme of the Constitution, the relevant provisions thereof, including Article 368, are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. These cannot be catalogued but can only be illustrated thus:
1. The Supremacy of the Constitution;
2. Republican and democratic form of government and Sovereignty of the country;
4. Demarcation of power between the Legislature, the Executive and the Judiciary;
5. The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV;
6. The unity and integrity of the Nation.”

Hedge and Mukherjee JJ. ruled:

"On a careful consideration of the various aspects of the case, we are convinced that Parliament has no power to abrogate or emasculate the basic elements or fundamental features of the Constitution such as the Sovereignty of India, the democratic character of our polity, the unity of the country, the essential features of the individual freedoms secured to the citizens. Nor has Parliament the power to revoke the mandate to build a Welfare State and egalitarian society. These limitations are only illustrative and not exhaustive, despite these limitations, however, there can be no question that the amending power is a wide power and it reaches every part of the Constitution. That power can be used to reshape the Constitution to fulfil the obligation imposed on the State. It can also be used to reshape the Constitution within the limits mentioned earlier, to make it an effective instrument for social good.”

The philosophy underlying the doctrine of non-amendability of the basic features of the Constitution, evolved in Keshavananda’s case has been amply explained by Hedge and Mukherjee JJ as follows:

“Our Constitution is not a mere political document. It is essentially a social document. It is based on a social philosophy and every social philosophy like every religion has two main features - namely basic and circumstantial. The former remains constant but the latter is subject to change. The case of religion always remains constant but the practices associated with it may change. Likewise, a Constitution like ours contains certain features which are so essential that they cannot be changed or destroyed.”

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13 AIR 1973 SC 1461 at 1624
Later the issue arose in Indira Nehru Gandhi v. Raj Narain\(^{14}\):

According to Mathew, J., “there was consensus amongst the Judges forming the majority in Kesavananda Bharati case that democracy is a basic structure of the Constitution.”

In this regard, Chanrachud, J., has observed thus:

“I consider it beyond the pale of reasonable controversy that if there be any unamendable features of the Constitution on the score that they form a part of the basic structure of the constitution, they are that:

- India is a sovereign democratic republic;
- Equality of status and opportunity shall be secured to all its citizens;
- The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion and that
- The nation shall be governed by a Government of laws, not of men. These, in my opinion, are the pillars of our constitutional philosophy, the pillars therefore, of the basic structure of the Constitution.”

Unanimity of affirmation by this Constitution Bench has lent inviolable emphasis to the Basic Structure jurisprudence.

### 4.1.5. POST-KESVANANDA BHARATI STAGE

The Union Government moved the Court for a review of the doctrine of the basic structure enunciated in the Kesavananda Bharati case. The full bench of 13 Judges of the Supreme Court sat to hear the arguments. However, in a sudden move and without assigning any reasons, the Bench was dissolved by the Chief Justice A.N. Ray on 12\(^{th}\) November, 1978\(^{15}\).

\(^{14}\) 1975 Supp SCC 1.

\(^{15}\) Paras Diwan and Peeyushi Diwan: Indian Constitutional Law, p 530.
(i) 42nd Constitutional Amendment

The Government could not reconcile to any limitation, whatsoever, being imposed on the constituent power of the Parliament. It held that the impediments in the growth of the Constitution must be removed, for the Constitution, to be living, must be growing. With these considerations, the Parliament enacted the Constitution (42nd Amendment) Act, 1976. This amendment, inter alia, made the following two changes:

(a) It inserted Clause (4) and Clause (5) in Article 368 to the effect that an amendment to the Constitution under Article 368 shall not be called in question in any Court on any ground and that there shall be no limitation, whatever, on the constituent power of Parliament.

(b) It amended Article 31C to provide precedence to all the Directive Principles over Fundamental Rights under Articles 14 and 19

These clauses of the Constitution (42nd Amendment) Act, 1976 were challenged in the Minerva Mills Ltd. vs. Union of India Case.

(ii) Minerva Mills Phase

In the case of Minerva Mills Ltd. Vs. Union of India, the Supreme Court unanimously held clauses (4) & (5) of Article 368, inserted by Section 55 of the 42nd Amendment Act, 1976 as unconstitutional. The Court further dubbed them as being beyond the amending power of Parliament. The Court observed that these clauses destroyed the basic structure of the Constitution.

The Court unanimously held that the power of Judicial Review was one of the basic features of the Constitution, which could not be destroyed. The Court by majority, struck down the changes incorporated by the

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16 Objects and Reasons, the Constitution (42nd Amendment) Act, 1976.
17 AIR 1980 SC 1789
18 Ibid
amendment and restored Article 31C to its original state in which it was inserted by the 25th Amendment, 1971.

After analyzing the decision of Supreme Court in Keshvananda Bharati and Minerva Mills case, one can safely conclude that the amending power of Parliament is limited and that Parliament cannot, in the exercise of its constituent power under Article 368, destroy or abrogate the basic structure of the Constitution.

(iii) Later Developments:

In Sanjeev Coke Mfg. Co. vs. M/s Bharati Coking Coal Ltd.,19 the Supreme Court, speaking through Chinappa Reddy, J., created some doubts about the decision in Minerva Mills case, insofar as, it invalidated the amended Article 31-C. The Court held that the observations of the Court in the Minerva Mills Case invalidating the amendment in Article 31C by the 42nd Amendment were merely obiter.

In S.P. Sampath Kumar vs. Union of India,20 the Supreme Court without taking note of the observations in Sanjeev Coke Case21, relied exclusively on the Minerva Mills case.22 It established that the decision of the Supreme Court in the Minerva Mills case striking down the amended Article 31 C, was binding.

In subsequent decisions, the Supreme Court has referred to the Kesavananda Bharati vs. State of Kerala,23 (wherein the doctrine of Basic Structure of the Constitution was propounded) and therefore, it is now well settled that the amending power of Parliament under Article 368, is limited by this doctrine.

19 AIR 1983 SC 239
20 AIR 1987 SC 386
21 AIR 1983 SC 239
22 AIR 1980 SC 1789
23 AIR 1973 SC 1461
Invoking the doctrine of the Basic Structure, in P. Sambhamurthy vs. State of Andhra Pradesh, the Supreme Court unanimously invalidated Clause (5) of Article 371-D.

The Supreme Court, unanimously struck down the proviso to Clause (5) of Article 371-D as “violative of the rule of law which is clearly a basic and essential feature of the Constitution.” Since the main part of clause(5) was closely related with the proviso and did not have any rationale for independent existence the entire clause was invalidated.

The following features have so far, been declared to constitute the basic structure of the Constitution so as to be beyond the amending power of the Parliament under Article 368 —

1. Supremacy of the Constitution
2. Republican and democratic form of Government
3. Secular character of the Constitution/State

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24 AIR 1987 SC 663
25 Article-371D inserted by constitutional 32nd Amendment Act 1973 provided for setting up of Administrative tribunal for the state of Andhra Pradesh The main part of clause (5) provided that the final order of the Administrative Tribunal shall become effective upon its confirmation by the government or on the expiry of 3 months. The proviso to clause (5) authorised the government to modify or repeal any order of the tribunal
27 Kesavananda Bharati vs. State of Kerala, AIR 1973 SC 1461: B.R. Kapoor vs. State of Tamil Nadu., AIR 2001 SC 3435; The five-Judge Constitution Bench of the Supreme Court, hearing the constitutional validity of AIADMK Chief Ms. J. Jayalalitha’s appointment as Chief Minister of Tamil Nadu ruled that “the Constitution is supreme” and that the mandate of the people could not overrule the provisions of the Constitution. The Court explained that the will of the people must stand subordinate to the Constitution and the people’s mandate would prevail provided it was not in conflict with the Constitution.
4. Federal character of the Constitution
5. Sovereignty of India
6. Judicial review
7. Free and fair elections
8. Rule of Law
9. Right to equality
10. The harmony and balance between Fundamental Rights and Directive Principles of State Policy
11. Limited amending power of the Parliament
12. Separation of powers among the Legislature, Executive and Judiciary and independence of the Judiciary
13. Parliamentary democracy

Though the Supreme Court has held that the above cited provisions constitute the basic structure, nevertheless these should not be construed to be the only ones which make it up. So uncertainty exists as to what else will constitute the basic structure but still the basic structure theory has the broad purpose of putting restraints on the unfettered parliamentary power to amend any and everything in the Constitution.

Ibid.
Indira Nehru Gandhi vs. Raj Narain, AIR 1975 SC 2299.
S.C. Advocates-on-Record Assocn. vs. Union of India, AIR 1994 SC 268.
Minerva Mills Ltd. vs. Union of India, AIR 1980 SC 1789
Ibid
State of Bihar vs. Bal Mukund Sah, AIR 2000 SC 1296
(iv) **IR Coelho vs State of Tamil Nadu**

In a landmark judgment in I.R. Coelho (dead) by LR v. State of Tamil Nadu, a 9 Judge Constitution Bench held that any law placed in the Ninth Schedule after April 24, 1973 when Kesavananda Bharti’s judgment was delivered will be open to challenge. The Court said that even though an Act is put in the Ninth Schedule by a Constitutional amendment its provisions would be open to challenge on the ground that they destroy or damage the basic feature, if the fundamental rights are taken away or abrogated pertaining to the basic feature or the basic structure.

The crucial question in the application of basic structure doctrine is how to assess or determine whether or not the basic structure of the Constitution is affected by the exercise of amending power in pursuance of article 31B under article 368? and it is this question that has been squarely answered by the nine-judge constitutional bench of the Supreme Court unanimously in I.R. Coelho.

The apex court has expounded the nature of fundamental rights contained in part III of our Constitution as the very basis of the basic structure principle:

a) "Part III of the Constitution does not confer fundamental rights. It (merely) confirms their existence and gives protection."  

b) The fundamental rights in part III have been described as transcendental." 'inalienable,' and 'primordial.'

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40 AIR 2007 SC 861  
41 headed by Chief Justice Y. K. Sabharwal (also comprising Ashok Bhan, Arijit Pasayat, B.P. Singh, S.H. Kapadia, C.P. Thakkar, P.K. Balasubramanyan, Altmas Kabil and D.K. Jain, JJ.  
42 The Ninth Schedule was introduced through Article 31 (b) by the First Constitution (Amendment) Act, 1951. The object of the Ninth Schedule was to save land reforms laws enacted by various States from being challenged in the Court. Later on, it became an omnibus and every kind law whether it related to election, mines and minerals, industrial relations, requisition of property, monopolies, coal or copper nationalisation, general insurance, sick industries, acquiring the Alcock Ashdown Company, Kerala Chilies Act, Tamil Nadu reservations of 69% and so on were inserted in it. No principle underlies this selection. The Tamil Nadu law in it was added because of the Supreme Court’s ruling in the Mandal case that overall reservation cannot exceed 50%. In the instant case, the petitioners had challenged the validity of the various Central and State laws put in the Ninth Schedule including the Tamil Nadu Reservation Act.  
43 I.R. Coelho at 875 para 62.
c) The purpose of part III of the Constitution is to withdraw fundamental rights "from the area of political controversy to place them beyond the reach of majority and officials and to establish them as legal principles to be applied by the courts." 45

d) "Every foundational value is put in Part III as fundamental right as it has intrinsic value." 46 If it has no 'intrinsic value', as is the case in relation to right to property, the same could be excluded from part III. 47

e) "A right becomes a fundamental right because it has a foundational value." 48

f) "Fundamental rights in Part III are limitations on the power of the State." so that the citizens could enjoy those rights in "the fullest measure." 49

g) A total deprivation of fundamental rights, even in a limited area, can amount to abrogation of a fundamental right, just as partial deprivation in every area." 50

(h) Fundamental rights need to be protected not only because they are 'superior' or 'higher' rights, but for the reason that their protection is the best way to promote "a just and tolerant society." 51

(i) For the protection of fundamental rights, the remedial right under Article 32 of the Constitution, has itself been made the fundamental right. On account of its critical importance in the constitutional scheme, this remedial right is called "the very heart and soul of the constitution," 52 or the "sentinel on the qui vive." 53

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44 Ibid at 876 para 63.
46 Ibid.
47 Perhaps, it is on the strength of this logic, Khanna J in Indira Gandhi clarified that the fundamental right to property is not a basic feature of the basic structure doctrine. Ibid para 91. Ibid at 885 para 108: "detailed discussion in Kesavananda Bharti case demonstrate that right to property was not part of basic structure of the constitution."
48 I.R. Coelho at 875 para 62.
49 Ibid at 876 para 63.
50 Ibid at 872 para 50. This observation made by Chandrachud CJI in Minerva Mills in the context of constitutionality of article 31C has been considered to have equal and full force" for deciding the ambit of amending power under article 368 in pursuance of Article 31B read with the ninth schedule of the Constitution, ibid.
51 Ibid. at 871 para 46, citing the Nobel laureate Amartya Sen
52 Ibid. at 871 paras 37 and 38. This characterization of article 32 has been extended to all the rights enumerated in part III of the Constitution: Ibid. at 886 para 110.
53 Ibid. at 871 para 39.
In the light of this exposition, the nine-judge bench states unequivocally: "If the doctrine of basic structure provides a touchstone to test the amending power or its exercise, there can be no doubt and it has to be so accepted that Part III of the Constitution has a key role to play in the application of the said doctrine.

The nine-judge constitutional bench in I.R. Coelho has made a distinct contribution towards the development of the basic structure doctrine.\textsuperscript{54} One, it has provided the clear basis for the operation of this doctrine by resting it on the bedrock of fundamental rights. This has been achieved through the formulation of two tests - the 'rights test' and the 'essence of rights test'. Such a concretion removes the hitherto prevailing haziness in the perception and application of this doctrine.

Two, it has broadened the base of the basic structure doctrine. Instead of simply saying that such and such articles of the Constitution would constitute the basic features of the Constitution, the violation of which would be the violation of the basic structure, it has shifted the focus from the 'rights' to the 'essence' or 'underlying principles' of those rights.\textsuperscript{55} "If the [impugned] law infringes the essence of any of the fundamental rights or any other aspect of basic structure, then it will be struck down."\textsuperscript{56}

Three, the widened basis of the basic structure doctrine instantly makes it more dynamic and accommodative, because that enables it to include even some unarticulated rights based on abstracted values.

Four, it helps in removing the popular misgiving; namely, whether the basic structure doctrine shifts the 'centre of gravity' or the 'centre of policy decision-making,' from Parliament to the Supreme Court or from the legislature to the

\textsuperscript{54} Prof. V. Kumar : Basic structure of Indian Constitution: Doctrine of Constitutionally Controlled Governance (from kesavananda Bharti to IR Coelho) JILI 2007 Vol. 49 p. 394-397.

\textsuperscript{55} Ibid at 886 para 113: "Other countries having controlled Constitution, like Germany, have embraced the idea that there is a basic structure to their Constitutions and in doing so have entrenched various rights as core constitutional commitments. India's constitutional history has led us to include the essence of each of our fundamental rights in the basic structure of our Constitution."

\textsuperscript{56} Ibid at 886 Para. 114.
judiciary. By founding the basic structure doctrine concretely on the bedrock of fundamental rights and the principles underlying them, the decision of the nine-judge bench has supplied the reasonably objective basis for confirming the 'supremacy of the Constitution', which somehow or the other had got deflected earlier owing to the indiscriminate use of the amending power under article 368 in pursuance of Article 31B. Truly speaking, the basic structure doctrine is neither about the supremacy of Parliament, nor about the supremacy of the Supreme Court. It is Constitution-centric. It is entirely a different matter that in the application of this doctrine, the judiciary is destined to play a critical role. But this is due to the role assigned to the judiciary by the Constitution, which is based on the principle of separation of powers. Otherwise also, the judges, by virtue of the special role and responsibility of rendering justice, especially steeped in the common law tradition, they are truly trained and equipped to take the 'holistic view' of things in each case presented before them, and they are required to support their conclusions in terms of the basic values of the Constitution. On the other hand, recognizing that fundamental rights are not inviolable in the larger interest of society, the state is required "to justify the degree of invasion of fundamental rights," because the legislature is presumed "to legislate compatibly with fundamental rights."57 "The greater the invasion into essential freedoms, [the] greater is the need for justification, and determination by the court whether invasion was necessary and if so to what extent."58

Five, it answers the question that is often in vogue: whether the basic structure doctrine is a resurrection of Golak Nath. Apparently it seems to be so, because Kesavananda Bharati on the one hand overrides the decision in Golak Nath to the effect that fundamental rights are no more un-amendable, on the other hand provides that their violation might amount to the violation of the basic structure of the Constitution, because the fundamental rights and the principles underlying them constitute the very basis of the basic structure doctrine. In other words, the basic structure doctrine forbids the amendment of the fundamental rights, and this takes us back to Golak Nath.

57 Ibid at 892 para 148
58 Ibid.
Such an inference or a conclusion is rather superficial, because there is a critical 'functional' difference between the two situations. Golak Nath says that you cannot adversely amend fundamental rights at all; whereas Kesavananda Bharati lays down that abrogation of fundamental rights may or may not violate the basic structure doctrine. If they violate the basic structure doctrine, then violation of fundamental rights is not permissible; if their violation does not violate the basic structure doctrine, then their violation is permissible. In this respect, we may quote Chandrachud CJI when he stated in Minerva Mills to the effect that "if by constitutional amendment, the application of Articles 14 and 19 is withdrawn from a defined field of legislative activity, which is reasonably in public interest, the basic framework of the Constitution may remain unimpaired." This implies that in certain situations certain rights or freedoms "may justifiably be interfered with," as for instance, in cases of "terrorism." Such an approach saves us from treating the fundamental rights in the nature of 'static', instead of 'dynamic', values.

Six, the judgment in I.R. Coelho has put the basic structure doctrine on firmer footing. It is unique in many ways, including for its analysis, and also for its unanimity. By reason of being a unanimous judgment of the nine judges, it instantly precludes or at least radically reduces the possibility of differing interpretations of the law laid down by it. This, in turn, makes the judgment certain, definite, clearly understood and easily applicable, which indeed is the true unifying role of the apex court envisaged under article 141 of the Constitution, the role of declaring "the law."

The Court said that the validity of any Ninth Schedule law has been upheld by the Apex Court and it would not be open to challenge it again, but if a law is held to be violative of fundamental rights incorporated in Ninth Schedule after the date of judgment in the Keshavanand Bharti’s case, such a violation shall

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59 Ibid at 892 Under the basic structure doctrine, if a law "that abrogates or abridges rights governed by Part III of the Constitution may violate basic structure doctrine or it may not."

60 Article 141: "The law declared by the Supreme Court shall be binding on all courts within the territory of India." Emphasis added.
be open to challenge on the ground that it destroys or damages the basic structure of Constitution.

4.2 PUBLIC INTEREST LITIGATION

A right without a remedy does not have much substance. Whatever rights may be conferred on the poor by the Constitution or by law, these rights cannot help the poor much as they are not able to enforce them through court action because being poor and illiterate, they lack the resources to undertake the dilatory and costly court action. A significant achievement of the judiciary is to correct this inherent flaw in judicial procedure by developing the mechanism of Public Interest Litigation. For this purpose, the Supreme Court has given an extensive interpretation to Articles 32 and 226 of the Constitution.

Article 32(1) guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of Fundamental Rights enumerated in the Constitution. For this purpose, Article 32(2) empowers the Court to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. Article 32 is a fundamental right in itself. Article 32 provides a quick and summary remedy for enforcing the fundamental rights because a person can go straight to the Supreme Court without having to undergo the dilatory process of proceeding from the lower to the higher court as he has to do in other, ordinary litigation. The Supreme Court has thus been constituted as the protector and guarantor of the fundamental rights.

Under Article 32, the Court enjoys a broad discretion in the matter of framing the writs to suit the exigencies of the particular case and it would not throw out the application of the petitioner merely on the ground that the proper writ or direction has not been prayed for.61 The court's power is not confined to issuing writs only; it can make any order,

61 Chiranjit Lal vs Union of India AIR 1951 SC 41.
including a declaratory order, or give any direction, as may appear to it to be necessary to give proper relief to the petitioner.62

Once the court is satisfied that the petitioner's fundamental rights have been infringed, it is not only its right but also its duty to afford relief to the petitioner. We need not establish either that he has no other adequate remedy, or that he has exhausted all remedies provided by law, but has not obtained proper redress. When the petitioner establishes infringement of his fundamental rights, the court has no discretion but to issue an appropriate writ in his favour.63

No action lies in the Court under Article 32 unless there is an infringement of a Fundamental Right.64 As the Supreme Court has emphasized: 'The violation of a Fundamental Right is the sine qua non of the exercise of the right conferred by Article 32.65 On the other hand, Article 226 is broader in scope than Article 32. Under Article 226, a High court is empowered to issue a writ, order or direction for the enforcement of any fundamental right or 'for any other purpose'. The words 'for any other purpose' found in Article 226 (but not in Article 32) enable a High court to take cognizance of any matter, even if no Fundamental Right is involved.

Ordinarily, the principle followed for filing petitions under Articles 32 and 226 is that a person whose legal right is unduly affected can move the court for the enforcement of his right. This rule of standing (locus standi) created at least two problems, namely, (i) how to enforce 'diffused' public rights which vest not in one person but in a multitude of persons; and (ii) how to enforce the rights of the poor who did not have the knowledge and the wherewithal to come to the courts to enforce their rights. To minimize these problems, the Supreme Court has pioneered

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63 Daryao v State of Uttar Pradesh AIR 1961 SC 1457
64 Andhra Industrial Works v Chief Controller of Imports AIR 1974 SC 1539.
65 Fertilizer Corporation Kamgar Union vs. Union of India AIR 1981 SC 344.
the development of the procedure by way of Public Interest Litigation (PIL). S.P. Gupta v Union of India, decided by the Court in 1982, is regarded as the precursor of PIL in India. Several petitions were filed by advocates practicing in various High courts under Article 226, raising some significant questions concerning the independence of High court judges. The Supreme Court held these petitions maintainable as the lawyers have a vital interest in the independence of the judiciary. If by any illegal State action, the independence of the judiciary is impaired, the lawyers would certainly be interested in challenging the constitutionality or legality of such action. Enunciating the broad aspect of PIL, Bhagwati, J, observed that:

"... whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury."

He observed further:

"...we would therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision."

Emphasizing the need for PIL, he observed:

If public duties are to be enforced and social, collective 'diffused' rights and interests are to be protected, we have to utilize the initiative and zeal of public-minded persons and organizations by allowing them to

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67 AIR 1982 SC 149.
68 Ibid at 190
69 Ibid at 194
move the court and act for a general or group interest, even though they may not be directly injured in their own rights.\textsuperscript{70}

The second problem faced by the Court, as mentioned above, was that while there may be laws to protect and safeguard the interests of the poor, they cannot take advantage of these laws as they are ignorant of their rights and lack resources to undertake litigation to enforce their rights. Public Interest Litigation got a stimulus when the Supreme Court enunciated the proposition, showing its empathy for the poor, that where legal rights of the poor, ignorant, socially and economically disadvantaged persons are sought to be vindicated through a court action, the Court will permit concerned persons or voluntary organizations to place such matters before it. A non-political, non-profit and voluntary organization consisting of public-spirited citizens interested in espousing the cause of ventilating legitimate public grievances can be permitted to take up the case of the poor, who could not themselves seek redress through the labyrinth of costly and protracted legal and judicial process. The reason which has moved the Supreme Court of India to relax the traditional strict locus standi in favour of the weak and poor is the realization that if this is not permitted, the rights of the poor will ever remain unredressed as such people are least equipped to themselves bring their grievances before the court; and such a situation is destructive of the rule of law.

The first important case in which the question of making justice accessible to the poor was debated and discussed at length by the Supreme Court, is the Asiad case\textsuperscript{71}

\textsuperscript{70} Ibid at 192
\textsuperscript{71} Peoples Union for Democratic Rights Vs. Union of India AIR 1982 SC 1473 The factual context of the case was as follows: To hold the Asian games, contracts were awarded to contractors for the construction of several buildings, roads and stadium by the central government, Delhi government and the Delhi Development Authority. It transpired that the contractors were not fully observing the labour laws in respect of the labour employed by them on these works. The People's Union for Democratic Rights, a voluntary non-political organization, formed for the purpose of protecting democratic
A bench comprising Bhagwati and Bahrul Islam, JJ, treating the letter as a writ petition under Article 32, started hearings the complaint. The Central government, Delhi government and the Delhi Development Authority were made the respondents.

The very first objection raised against the maintainability of the writ petition was regarding the locus standi of the People’s Union for Democratic Rights (PUDR). The complaint was regarding the violation of the labour laws designed for the welfare of the workmen and, from the traditional point of view, only the workers themselves whose rights were being violated, could approach the court for redress. Therefore, the question was whether PUDR had any locus standi to bring the matter into the Court on behalf of the workers. Bhagwati, J, speaking for the court pointed out that the narrow view of standing, a legacy of the Anglo-Saxon system of jurisprudence, was no longer valid. A new dimension has been given to the doctrine of locus standi, which has revolutionized the whole concept of access to justice. He observed:

“This Court has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed and it is, therefore, necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost.”72

Accordingly, he enunciated the following principle:

“... that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or

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72 In a letter to Bhagwati, J, of the Supreme Court complained of violation of several labour laws by the contractors.

Ibid at 1477-78.
socially or economically disadvantaged position not able to approach the court for judicial redress, any member of the public acting bona fide and not out of any extraneous motivation, may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public-spirited individual or institution even by addressing a letter to the Court. 73

In such a situation, the court would cast aside all technical rules of procedure and entertain the letter as a writ petition and take action on it. Accordingly, PUDR was conceded locus standi to maintain the writ petition on behalf of illiterate and poor workers, PUDR is an organization dedicated to the protection of the fundamental rights and making the directive principles enforceable and justiciable. PUDR had brought the petition out of a sense of public service; it was thus clearly maintainable. Bhagwati, J, characterized the matter as ‘public interest litigation’. He explained the purpose and philosophy of the concept of Public Interest Litigation in the following words:
We wish to point out 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. 74

Bhagwati, J, emphasized that PIL is not meant to enforce the rights of one against another, as usually happens in traditional litigation. Public Interest Litigation 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.’ The rich have the resources to approach the court to protect their interests.

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73 Ibid at 1478.
74 Ibid at 1483.
But what about the poor who are living a sub-human existence? To protect their human rights, the social economic order needs to be restructured. Only through multi-dimensional strategies, including PIL, social and economic programmes can be effectuated. Underlining the great utility of PIL, Bhagwati, J, observed:

Public interest litigation, as we conceive it, is essentially a cooperative or collaboratively effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.75

Having disposed of the question of locus standi in favour of PUDR, there was another ticklish question to be considered in connection with the maintenance of the writ petition in the instant case. Under Article 32, a writ petition could be moved in the Supreme Court only for the enforcement of fundamental rights. Most of these rights operate as limitations on the power of the State as defined in Article 12(1) and impose negative obligations thereon not to encroach on these rights. But, in the instant case, the workers were engaged by private contractors and not directly by the government or any of its agencies. The question, therefore, was: Could a petition lie under Article 32 against the government when workmen whose rights were in question were employed by private contractors and not the government itself and, thus, according to the traditional view, the cause of action, if any, of the workers arose against the contractors and not the government? Rejecting this objection, Bhagwati, J, emphasized that the construction work had been entrusted to the contractors by the government and its agencies, and, accordingly, it was the obligation of these bodies to ensure observance of labour laws by the contractors. The government 'cannot fold its hands in despair and become a silent spectator to the breach of a constitutional prohibition being committed by its own contractors'.

75 Ibid at 1477-8.
Subsequent to the Asiad case, the question of PIL was again discussed at length by the Supreme Court in Bandhua Mukti Morcha.\textsuperscript{76} By the time this case arose, there had been a good deal of criticism of the new trend advocated by the Supreme Court in the Asiad case, and the court took an opportunity in Bandhua Mukti Morcha to answer this criticism. In this case, the court entertained a petition on behalf of an organization dedicated to the cause of release of bonded labour.

The petition was opposed by the state government. Bhagwati, J, speaking for the court, rebuked the state government for adopting such a stance, which he characterized as 'incomprehensible', and raising a preliminary objection to stall an inquiry by the court in the matter. The court opined that the state government, being under the constitutional obligation of bringing in social and economic justice for everyone, ought to have welcomed, rather than opposed, an inquiry into the complaint that a large number of workers were being exploited as bonded labourers.

The court then went on to explain the nature of PIL, that "... 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 and to ensure them social and economic justice which is the signature tune of our Constitution."\textsuperscript{77}

where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public, acting bonafide can move the court for relief under Article 32 and a fortiorari also under Article 226, so that the fundamental rights may become meaningful not only for the rich and the well to do, who have the means to approach the court but also for the large masses of people who are

\textsuperscript{76} AIR 1984 SC 802

\textsuperscript{77} Ibid at 811, 813
living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress.78

Bhagwati, J, pointed out, that the wording of Article 32(1) puts no limitation that the fundamental rights sought to be enforced must belong to the person moving the court. Nor does the Article say that the Supreme Court should be moved only by a particular kind of proceeding. 'It is clear from the plain language of Article 32(1) that whenever there is a violation of a fundamental right, any one can move the Supreme Court for enforcement of such fundamental rights.' When there is violation of a fundamental right of a person or class of persons who cannot have resort to the court because of poverty or disability or socially or economically disadvantaged position, the court must allow any member of the public acting bonafide to espouse the cause of such person or persons and move the Court. Mere 'verbal and formalistic canons of construction' ought not to be applied to interpreting Article 32. Its interpretation must receive illumination from the trinity of provisions 'which permeate and energize the entire Constitution', namely, the Preamble, the Fundamental Rights and the Directive Principles. Hence, any member of the public could move the court by just writing a letter, because it would not be right or fair to expect him acting pro bono publico to incur expenses out of his own pocket to approach a lawyer and prepare a regular writ petition for being filed in the court for enforcement of the fundamental rights of the poor. In such a case, a letter addressed by him could legitimately be regarded as an 'appropriate' proceeding.79

78    Ibid at 813.
79    A number of cases have been brought before the Supreme Court through letters complaining of infringement of fundamental rights. These letters are treated by the court as writ petitions. for example, Lakshmi Kant Pandey vs Union of India AIR 1984 SC 469; Ram Kumar Misra v State of Assam AIR 1984 SC 537; Neerja Chaudhary v State of Madhya Pradesh AIR 1984 SC 1099; the Asiad case, AIR 1982 SC 1473 and Bandhua Mukti Morcha case, AIR 1984 SC 802

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Two main types of cases come before the courts (High Courts and the Supreme Court) under PIL: (1) cases espousing the causes relating to the poor and the downtrodden;\(^80\) (2) cases raising socio-economic and administrative problems affecting the public generally, such as, environment protection,\(^81\) misuse of powers by the ministers, etc.\(^82\)

In a number of cases, the Supreme Court has laid down several norms to regulate the institution and conduct of PIL cases,\(^83\) has facilitated the pursuing of such cases by the petitioners, and has even awarded costs to the petitioners in deserving cases.\(^84\) Overall, the court has cautioned that PIL should not be used by a petitioner to grind a personal axe; he should not be inspired by malice or a design to malign others or be actuated by selfish or personal motives or by political or other oblique considerations. The petitioner ought to act bona fide and with the aim of vindicating the cause of justice.\(^85\)

\(^80\) Reference has already been made to Asiad and Bandhua Mukti Morcha case. Some other cases in this category are: Hussainara khatoon vs State of Bihar AIR 1979 SC 1360 concerning the administration of criminal justice, Sanjit Roy v State of Rajasthan, AIR 1983 SC 328 Labourers Working on Salal Hydro-Project, AIR 1984 SC 177. In Upendra Baxi v State of Uttar Pradesh (1986) 4 SCC 106, the court gave directions to the state government seeking improvement of the living conditions in the Government Protective Home at Agra.


\(^82\) Centre for Public Interest Litigation v Union of India (1995) Supp (3) SCC 382; Shiv Sagar Tiwari v Union of India (1996) 6 SCC 599. for example, Chaitanya Kumar v State of Karnataka AIR 1986 SC 825, where the award of a contract by the state government was quashed by the court with the observation: ...the court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the court cannot shirk its duty and refuse the writ.

\(^83\) for example, S.P Anand v H.D. Deve Gowda (1996) 6 SCC 734; Balaji Raghavan vs Union of India (1996) 1 SCC 361.

\(^84\) Janata Dal vs H.S. Chowdhary (1992) 4 SCC 305.

Public Interest Litigation is a result of judicial activism. It has come to stay as a mechanism to agitate public issues before the courts within the confines of legal and constitutional mould. PIL has played a significant role in vindicating the fundamental rights of the people and in exposing latent as well as patent social problems and finding solutions for them. At the same time, PIL is a weapon which must be used with great care and circumspection; the courts need to keep in view that under the guise of redressing a public grievance, PIL does not encroach upon the sphere reserved by the Constitution for the executive and the legislature. The main cause for the growth of PIL in India is bureaucratic inertia and the indifference of the legislature to solving the problems facing the people.

The Supreme Court has observed in M/s. J. Mohapatra & Co. v. Orissa, that to-day "the law with respect to locus standi has considerably advanced" and "in the case of public interest litigation it is not necessary that a petitioner should himself have a personal interest in the matter". The petitioner should not, however, come to the court for personal gain or private profit or political motive or any oblique consideration. Nevertheless, even though the scope of locus standi has been widened by the Supreme Court in the field of PIL, yet a mere busy body having no interest in the subject-matter cannot invoke the jurisdiction of the courts.

PIL has flourished in India mainly because of the lack of any sense of accountability and responsibility on the parts of government. Had the administration discharged its role faithfully and effectively, there would be no need for people to knock at the doors of the courts to assert their rights and ensure that the Administration acts according to law. Many statutes remain on the statute book without the Administration taking any steps to implement the same. On the other hand, the courts have played

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96 Lakshmi Kant Pandey vs Union of India AIR 1984 SC 469
87 State of Himachal Pradesh vs Student’s Parents Medical College Shimla AIR 1985 SC 910
88 AIR 1984 SC 1572, 1574
89 Delhi Municipal workers union vs Delhi Municipal Corporation AIR 2001 Del. 68
90 Ranjit Prasad vs. Union of India, (2000) 9 SCC 313
their role in a constructive manner with a view to promote the welfare of the people and strengthen the democratic fabric in the country.

4.2.1 FEATURES OF PIL

The PIL was evolved basically to protect the human rights of the poor, the downtrodden and weaker sections of society, who, because of lack of resources and knowledge, were unable to seek legal redress. It emerged as the most extraordinary innovation in the Indian judicial process which has no parallel in the world. Through the mechanism of PIL, the courts seek to protect human rights in the following ways:91

1. By creating a new regime of human rights by expanding the meaning of Fundamental Rights to equality and Right to life and personal liberty. In this process, the right to speedy trial, free legal aid, right to livelihood, right to live with dignity, right to education, right to shelter, right to health and medical care, right to clean environment, right against torture, right against sexual harassment, right against solitary confinement, right against bondage and servitude and right against exploitation emerge as human rights. These new, re-conceptualized rights provide legal resources to activate the courts for their enforcement through Public Interest Litigation.

2. By democratisation of access to justice. This is done by relaxing the traditional rule of locus standi. Any public-spirited citizen or social action group can approach the court on behalf of the poor, ignorant, downtrodden and weaker section of the society. The Court's jurisdiction can be invoked even by writing a letter or sending a telegram to a court. This has been called epistolary jurisdiction.

3. By fashioning new kinds of reliefs under the court's writ jurisdiction. For example, the court can award interim compensation to the victims of governmental lawlessness. This stands in sharp contrast to the Anglo-

91 Parmanand Singh; Protection of Human Rights Through Public Interest Litigation JILI Vol. 42: 2-4 p 266
Saxon model of adjudication where interim relief is limited to preserving the status quo pending final decision. Moreover the grant of compensation in PIL matters does not preclude the aggrieved person from bringing a civil suit for damages. In PIL cases the court can grant any relief to the victims.

(4) By judicial monitoring of State institutions such as jails, women’s protective homes, juvenile homes, mental asylums, and the like. Through judicial invigilation, the court seeks gradual improvement in their management and administration. This has been characterized as creeping jurisdiction in which the Court takes over the administration of these institutions for protecting human rights.

(5) By devising new techniques of fact-finding, in most of the cases the Court has appointed its own socio-legal commissions of inquiry or has deputed its own officials for investigation. Sometimes it has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or experts to inquire into human rights violations. This may be called investigative litigation.92

The Supreme Court has held that Public Interest Litigation could be filed by any member of the public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress. This is absolutely necessary for maintaining the rule of law and accelerating the balance between law and justice.

The next question is **whether the courts should entertain Public Interest Litigation in the present scenario when the courts are already overloaded with cases?**

There has been a growing apprehension that Public Interest Litigation would lead to false and frivolous cases and may thus overburden the already burdened courts. Therefore, there is need to restrict the standing

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92 Ibid
rights (locus standi). It is submitted that if proper claims exist, the necessary resources for their satisfaction and determination must be made available by the State and the excuse that the courts are already burdened should not stand in the way of distributive justice. Dispelling the myth that public interest litigation will cause explosion in terms of false and frivolous litigation, Krishna Iyer, J., in Fertilizer Corporation Kamgar Union vs Union of India\(^{93}\) had pointed out:

"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 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 to be repelled from it by narrow pendency, now surrounding locus standi."\(^{94}\)

Thus is submitted that the time, money and other inconveniences involved in litigation act as sufficient deterrents for many people to take recourse to legal action. Moreover, in a country like ours, where the rule of law prevails, every citizen who suffers a wrong has a right to move the court. Suppose, a group of citizens has suffered a wrong, every member of the group can maintain an action individually and this will proliferate the litigation but we cannot make an assumption in favour of decrease in litigation simply because the people are poor and ignorant of their rights and are thus unable to maintain an action. In a Public Interest Litigation there is a representative suit for all the members of a group who have a common grievance. Thus, it can be safely concluded that Public Interest Litigation leads to reduction rather than increase in courts’ workload. Moreover, should the doors of the highest court be closed to the poor because this adds upto the arrears of pending cases? Are the doors of the Court open to those who can afford to file regular petitions? On this the observation of Bhagwati, J., in Asiad Workers case\(^{95}\) is as under:

\(^{93}\) AIR 1981 SC 344  
\(^{94}\) Ibid  
\(^{95}\) AIR 1982, SC 1473
If the Fundamental Rights of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so-called champions of human rights frown upon it as waste of time of the highest court of the land, which, according to them should not engage itself in such small and trifling matters.

It is submitted that 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 sensitized to the needs of the poor and backward sections of the society and dispense distributive justice to the large masses of people who have been denied their right by a heartless society for generations. The realization must dawn on them that distributive justice is the signature tune of our Constitution, and it is their solemn duty to enforce the basic human rights of the poor and vulnerable sections of the community and also help them actively in the realization of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of distributive justice, for without it, it cannot survive for long. Fortunately, this change is gradually taking place and Public Interest Litigation is playing a great part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire scenario of law is changing.

4.2.2 LIMITATION ON PUBLIC INTEREST LITIGATION

Public Interest Litigation is a result of judicial activism. It has come to stay as a mechanism to agitate public issues before the courts within the confines of legal and constitutional mould. PIL has played a significant role in vindicating the fundamental rights of the people and in exposing latent as well as patent social problems and finding solutions for them.96

At the same time, PIL is a weapon which must be used with great care and circumspection; the courts need to keep in view that under the guise

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96 Lakshmi Kant Pandey vs Union of India AIR 1984 SC 469
of redressing a public grievance, PIL does not encroach upon the sphere reserved by the Constitution for the executive and the legislature.\textsuperscript{97} The main cause for the growth of PIL in India is bureaucratic inertia and the indifference of the legislature to solving the problems facing the people.

No doubt, Public Interest Litigation is a revolutionary innovation, it requires careful handling so that judicial process is not misused for political reasons.\textsuperscript{98}

Justice Bhagwati in Judges case\textsuperscript{99} lays down following limitations within which the courts have to work in Public Interest Litigation cases:-

a) Courts must see that the member of public who approaches the court in such cases is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration.

b) Courts must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain political objective.

c) Court must not overstep the limits of its judicial functions and trespass into areas reserved for Executive and Legislature by Constitution.

In Shri B. Krishna Bhatt V Union of India\textsuperscript{100} a public spirited individual through a petition under Article 32 sought to assail the non-enforcement of policy of prohibitions enjoined by Article 47 of Indian Constitution. The Supreme Court dismissed the petition on the ground that function of Article 32 is not to make any state accept and enforce a particular policy, howsoever desirable and necessary that might be. The court observed, "Article 32 of Indian Constitution is not the nest for all the bees in the bonnet of public spirited persons'.

\textsuperscript{97} State of Himachal Pradesh vs. Student's Parents Medical College Shimla AIR 1985 SC 910

\textsuperscript{98} M.N Chaturvedi : Liberalising the Requirement of Standing in PIL 26 JILI (1984) 42

\textsuperscript{99} SP Gupta vs Union of India AIR 1982 SC 149

\textsuperscript{100} 1990 (1) SCALE 155
In Vishal Jeet Vs. Union of India\textsuperscript{101} An advocate filed a writ petition under Article 32 by way of Public Interest litigation seeking issuance of directions for Central Bureau of Investigations to institute an inquiry against those police officers under whose jurisdiction the red light area as well as devdasi and jogin traditions had been flourishing and to take necessary action against such police officers. The court held that it was neither possible nor desirable to make a roving inquiry through C.B.I. throughout the length and breadth of the country and no useful purpose will be served by issuing a such directions.

In Neetu vs State of Punjab\textsuperscript{102} the apex court observed

"Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

Commenting on the status of PIL Justice Markandey Katju in Common Cause A Regd. Society vs. Union of India\textsuperscript{103} observed, “PIL...... has, in

\textsuperscript{101} AIR 1990 SC 1412
\textsuperscript{102} 2007 (2) SC J 162
\textsuperscript{103} MANU/SC/7480/2008
course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases……."

In Dattaraj Nathuji Thawara v. State of Maharashtra104 Justice Arijit Pasayat’s observed: “…… the busy bodies, meddle some interlopers, wayfarers or officious interveners having absolutely no public interest expect for personal gain or private profit either of themselves or a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of PIL and get into the Courts by filing vexatious and frivolous petitions and, thus, criminally waste the valuable time of the Courts, as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.” He went further and termed PIL as ‘publicity interest litigation’, ‘private interest litigation’, ‘politics interest litigation’ or ‘paise income litigation’ by one of the Supreme Court judges in a recent judgment.

4.2.3 SUGGESTIONS

(1) It must become the common policy of the Supreme Court and the High Courts to accept and entertain PIL cases on a priority basis.

(2) PIL should also be encouraged at the lower level of the judiciary so that the ‘Subordinate judiciary’ can also get acclaimed to the new legal culture.

(3) The Courts must use their own officials not only to ascertain facts, but also to monitor the implementation of the various directions given by the Court. They must create a fact- finding machinery as parts of their structure.

(4) Contempt of court provisions must be strengthened, so that those who lie in the court can be punished.

104 MANU/SC/1060/2004

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Court orders must be issued to the persons concerned as soon as possible, certified copies of orders must be made available immediately to those who have to go and make an inquiry.

There are no well defined and uniform standards to guide Judges in the matter of entertaining and deciding public interest litigations. To ensure uniformity in entertaining and deciding PIL petitions, a suitable legislative act should be enacted.

The Committee for Implementing Legal Aid lawyers to conduct PIL cases in the Supreme Court and High Courts and create PIL lawyers chambers funded by legal aid societies or the public.

There should be periodic meetings of PIL lawyers to share their experiences.

Cooperation among the lawyers, journalists, social activists and academicians must be strengthened so that there can be a better interdisciplinary approach and support to complex PIL cases.

There is need of a PIL journal to report all relevant PIL cases and to provide a forum for sharing information and ideas among those who are involved in this field.

The legal aid programmes at the Supreme Court and High Courts levels must be expanded to meet the expenses of PIL petitions.

Voluntary agencies must be encouraged to take up PIL to enforce the rights of the poor.

A human right commission in each state, consisting of sitting or retired judges of the High Courts or Supreme Court or some eminent jurists, should be set up by the State Governments to investigate the matters relating to prison conditions, undertrial prisoners, bonded labourers, custodial violence to women and children, etc.
The affected people must be helped to participate in PIL so that it can awaken their consciousness.

Every PIL petition filed in the Court must be the result of community or group involvement, reflection and decisions.  

4.3 IMPLEMENTATION OF LABOUR LAWS

The Supreme Court has made a valuable contribution in the evolution of Industrial Jurisprudence. The Supreme Court and the various High Courts have entertained public interest litigation for securing justice to workers working in various industrial establishments by enforcement of Labour welfare legislation some of the important cases in this area are examined here:

The Peoples’ Union for Democratic Rights vs. Union of India is a landmark judgment in which Supreme Court gave a new dimension to the Minimum Wages Act, the Employment of Children Act, the enforcement of Labour laws and Public Interest Litigation.

In this case, the registered contractors, through the Jamadars employed many workers for constructions work of various projects connected with the Asian Games held in 1982. These workers were brought from different states and they were forced to work under inhuman conditions. The petitioner i.e. People’s Union for Democratic Rights made several allegations against the employers through Public Interest Litigation. Firstly, the workers were not paid the minimum wages of Rs 9.25 by their contractors, rather the Jamadar used to deduct Re. 1 from each worker’s wages as his commission in violation of Minimum Wages Act, 1948. Secondly, the workers were not provided the basic requirements like

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105 SC Gupta: Public Interest Litigation: Supreme Court of India an instrument of Social legal advancement (1995), p 155  
106 e.g. The Child Labour (Prohibition and Regulation) Act, 1986; the Minimum Wages Act, 1948; the Maternity Benefit Act, 1961; the Bonded Labour System (Abolition) Act, 1970; and the Equal Remuneration Act, 1976.  
107 AIR 1982 SC 1473
medical facilities, proper living conditions, canteen facilities to which they were entitled under the Contract Labour (Regulation & Abolition) Act, 1970. Thirdly, women workers were paid less than their male counterparts in violation of the Equal Remuneration Act, 1976. Fourthly, many children who were below the age of 14 years were employed in the construction work on the Asiad project. Fifthly, wherever prosecutions were initiated against the contractors, for the violation of Labour laws, the Magistrate imposed only a small amount of fine as they took the matter very lightly. In view of all these allegations against the contractor and the Magistrate, the Supreme Court took cognizance of the matter and issued a number of directions to the Union of India, Delhi Administration, and Delhi Development Authority compelling them to enforce the provisions of Labour laws, which were beneficial to the workers. The Supreme Court took very seriously the attitude of the Magistrate who has imposed a sum of Rs. 200 only, for violation of provision of Labour laws and observed that:

"The Magistrate seems to view the violations of labour laws with great indifference and unconcern as if they are trifling offences, undeserving of judicial severity. He seems to overlook the fact that labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy immunity against violations of labour laws by paying a paltry fine, which they would not mind paying because by violating the labour laws they would be making profit which would far exceed the amount of fine. If violators of labour laws are going to be punished only by meager fines, it would be impossible to ensure the observance of labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws."

The Court further held that "we would like to impress upon the Magistrates and Judges in the country that violations of Labour laws must be viewed with strictness and wherever any violation of Labour

\[108 \text{ AIR 1982 SC 1482} \]
laws are established before them, they should punish the errant employers by imposing adequate punishment.\textsuperscript{109}

Further, the court has given a new dimension to the concept of minimum wages by enlarging the contours of 'trafficking in human beings and forced Labour' provided under the Constitution when it observed:

What Article 23 prohibits 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 a legal provision 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... The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice or alternative 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 wage.\textsuperscript{110}

The court further provides that where a person provides labour or service 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. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the Labour or service provided by him ceases to be "forced labour" and "the breach of Article 23 is remedied."\textsuperscript{111}

\begin{flushleft}
\textsuperscript{109} Ibid 1489-90
\textsuperscript{110} Ibid 1489-90
\textsuperscript{111} Ibid 1490
\end{flushleft}
The Court further held that non-observance of the provisions of the Equal Remuneration Act, 1976 is in effect and substance a breach of the principle of equality before law, enshrined in Article 14 of the Constitution. Similarly non-observance of provisions of the Contract Labour (Regulation and Abolition Act, 1970) and Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979 amounts to violation of Article 21 of the Constitution. The rights and benefits conferred on workmen employed by a contractor under the provision of Contract Labour (Regulation of Employment & Conditions of Service) Act, 1970 are intended to ensure basic human dignity to the workmen. If they are deprived of any of these benefits, it would clearly violate Article 21 of the Constitution.

In Sanjit Roy vs. State of Rajasthan\textsuperscript{112} a Public Interest Litigation was filed by the petitioner under Article 32 of the Constitution before the Supreme Court alleging that the workers, who were employed for the purpose of construction of roads as parts of famine relief work by the PWD of Rajasthan State, were not being paid minimum wages as provided under the Act. The Government of Rajasthan contended that since the construction work of Madanganj Harmara Road was a famine relief work, the Minimum Wages Act, 1948 was not applicable by reason of Rajasthan Famine Relief Work Employers (Exemption from Labour Laws) Act, 1964 because, Section 4 of the Exemption Act provides that, 'no court shall take cognizance of any matter in respect of an employee of famine relief work under labour laws', which includes the Minimum Wages Act, 1948. The State Government contended that when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the Labour laws because if the States were required to observe Labour laws, the potential of the State to provide employment to the affected persons would be crippled and it would not be able to render help to the maximum number of affected persons and

\textsuperscript{112} AIR 1983 SC 328
it was for this reason that applicability of the Minimum Wages Act, 1948 was excluded in relation to workmen employed in famine relief work.

The petitioner challenged the validity of the Exemption Act itself and said that the Act violates the Fundamental Rights guaranteed under Article 23 of the Constitution\textsuperscript{113}. The argument put forward by the State Government was that in order to assist persons who were severely affected by drought and scarcity conditions, the famine relief work was undertaken by the State Government. Therefore, under these circumstances it was very difficult to comply with the labour laws. The court rejected all the arguments advanced by the State and observed that if anything less than minimum wages is paid to the workers for any type of work, it amounts to a violation of their fundamental right guaranteed under Article 23 of the Constitution. The Court also struck down the Exemption Act, which excludes the applicability of the Minimum Wages Act, 1948, and declared the Act as unconstitutional and invalid. The Court also observed that State could not be permitted to take advantage of the helpless conditions of the affected persons and extract labour or services from them on payment of less than the minimum wages. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions.

The Supreme Court observed

The right of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area affected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to

\textsuperscript{113} Article 23 of the Constitution of India says that “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”
some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those rights? Because he belongs to a distressed area, is he liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune? The prescription of equality in Article 14 of the Constitution gives one answer only, and that is a categorical negative. The court found no justification in denying minimum wages to each workers merely because the employment was provided as a measure of famine relief. 114

It is submitted that the aforesaid decision has provided a great relief to the employees who are given employment in distress. This decision is a landmark in the area of adjudication on minimum wages. Indeed, the decision suggests that the payment of less than minimum rates of wages would be violative of Article 14 of the Constitution. Whatever may be the reason for such denial, the law which seeks to grant exemption in respect of payment of minimum wages would be ultra -vires.

In many cases, by the judiciary has directed the State Government to release forthwith the bonded labourers and to take up rehabilitation programme. For example, in Bandhua Mukti Morcha vs. Union of India115, the Supreme Court was confronted with the gross violation of human rights of persons who were working in two stone quarries. The organization in its Public Interest Litigation alleged that the labourers working in Faridabad quarries were living in inhuman conditions and were exposed to fatal injuries caused due to accidents while working in mines.

No medical facilities were provided to them and to top it, drinking water was being supplied to them once in two days. In case of death or injury which occurred during the course of their employment, they were not being paid any compensation. Above all, the middlemen were extracting 30% to 40% commission out of the wages received by the labourers. The Supreme Court appointed a two-Advocate Commission to probe the

114 Ibid at 335-36
115 AIR 1984 SC 802
issue and when these facts were confirmed by the Commission, the Court issued directions to both the Union Government and the State Governments to take immediate action to release all the bonded labourers forthwith. The Court also, relying on Article 21 of the Constitution, pointed out that the right enshrined in Article 21, derives its life-breath from the Directive Principles of State Policy under Articles 39, 42 and 43. Therefore, every citizen in this country has a right against torture, cruelty, exploitation and degrading treatment.116

Bandhua Mukti Morcha vs. Union of India117 is a landmark judgement by the Supreme Court in the arena of bonded Labour wherein the Court has stretched its protective arms to various aspects i.e. its identification, release and rehabilitation. However, the Haryana Government, instead of helping the Court to remove this evil practice, came forward in its usual bureaucratic ways and took a strictly legalistic and formalistic

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116 The Court, *inter alia*, directed the Government of Haryana to do the following and to submit the periodical report vis-a-vis its compliance.

i) Constitute a Vigilance Committee in each sub-division of a district in compliance with the requirement of Sec 13 of the Bonded Labour System (Abolition) Act, 1976 without any delay.

ii) Instruct the District Magistrates to take up the work of identification of bonded Labour as one of their top priority tasks and to map out areas of concentration of bonded Labour which are mostly to be found in stone quarries and brick kilns and assign task forces for identification and release of bonded Labour and periodically hold Labour camps in these areas with a view to educating the Labourers, *inter alia*, with the assistance of the National Labour Institute.

iii) Take the assistance of non-political, social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Bonded Labour System (Abolition) Act. 1976.

iv) Draw up, within a period of three months from the date of judgement, a scheme or programme for rehabilitation of the freed bonded Labourers in the light of the guidelines set out by the Secretary to the Ministry of Labour, Government of India his letter dated September 2, 1982 and implement such scheme or programme to the extent found necessary.

117 AIR 1984 SC 802
stand before the court. On one hand, this case demonstrates the deep concern of the Supreme Court for the downtrodden; on the other hand it shows the callousness of the Executive towards such vulnerable sections of the society.

Interestingly in Neerja Chaudhary v State of Madhya Pardesh\textsuperscript{118}, a Public Interest Litigation was filed in the form of a letter to the Supreme Court complaining that, even after the release of bonded labourers from the stone quarries by the Courts order, those bonded labourers were not rehabilitated by the Government of Madhya Pradesh even after six months of their release and were living in utter poverty. The petitioner also contended that, under the provisions of the Bonded Labour System (Abolition) Act, 1976, it was obligatory for the State Government to provide rehabilitation for the released bonded labourers. If the state government fails to ensure the same to the bonded labourers, it amounts to a violation of the Fundamental Right guaranteed to them under Article 21 of the Constitution. The Supreme Court held that, “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 and Article 23 of the Constitution.\textsuperscript{119} "

The Court accordingly directed the state government to include the representation of such social action groups in the vigilance committees in order to identify, release and rehabilitate bonded labour.\textsuperscript{120}

\textsuperscript{118} AIR 1984 SC 1099: (1984) 3SCC 243

\textsuperscript{119} Ibid at p 1106. The need for rehabilitating the bonded labourers was also emphasized by the Supreme Court in several subsequent cases viz. P. Sivaswami vs. State of A.P AIR 1988 SC 1863, Balram vs. State of M.P. AIR 1990 SC 44, People’s Union for Civil Liberties vs. State of Tamil Nadu (1994) 5 SCC 116.

\textsuperscript{120} Ibid at p 1104 Para 4 The Court also held Freedom from bondage without effective rehabilitation would frustrate the entire purpose of the Act, for, in that event, the freed labourers will slide back into bondage again to keep body and soul together".
The Court also directed the state government to provide rehabilitative assistance to 135 freed bonded Labourers within one month from the date of judgement. The court added that the nature of rehabilitative assistance to be provided for the family of a particular freed bonded labourer would have to be decided by the Vigilance Committee.\textsuperscript{121}

This Supreme Court judgment reflects the distrust of the court towards the Executive and its reliance on social action groups. This approach of the court, it is submitted, depicts the pragmatic mindset of the court in tackling the socio-economic problems of bonded Labour.

In Kapila Hingorani vs State of Bihar\textsuperscript{122} the Court issued directions to the State of Bihar and Jharkhand to pay salaries to the employees of the said public sector undertaking. The Court held that such directions to pay salaries had been issued not on the premise that States have a legal obligation to pay their salaries but on the ground that the employees have a human right as also a fundamental right under Article 21, which the States are bound to protect.

From the above decisions of the Supreme Court, it is evident that the court is playing an important and activist role in protecting and safeguarding the basic human rights of the bonded labourers in various industrial units. It is only on the directions issued by the Court that many bonded labourers working in stone quarries were released and were rehabilitated. In many cases, the Court has set up a commission to inquire into the pathetic conditions of the bonded labourers and on the report of the commission; many directions were issued for liberating

\textsuperscript{121} Ibid 1106

\textsuperscript{122} AIR 2005 SC 926 In this case the employees of a public sector undertaking were not paid their salaries for years together. As a result, a large number of employees were starving and many had already died. The State Government took the plea that the liquidation proceedings of these bodies were pending and the State had no effective control over the functioning of the said public sector undertaking and had no constitutional obligation towards the employees of public sector undertaking who have not been paid salaries for years.
many labourers from bondage. All this has been done by the judiciary under Article 21 of the Constitution to make the life and liberty of the labourers meaningful and dignified. In Francis Coralie Vs. Union Territory of Delhi\textsuperscript{123}, the Supreme Court has held that the right to life provided under Article 21 is not mere animal existence, but is a right to live with dignity\textsuperscript{124} and this is equally applicable to all labourers working in hazardous industrial units with inhuman conditions.

4.4 PROTECTION OF CHILDREN FROM EXPLOITATION

The Supreme Court has played an important role in protecting the interest of children. In a number of cases, it has given directions to protect the children from exploitation it has directed the State to provide free and compulsory education to the children till they attain 14 year of age\textsuperscript{124}. In M.C. Mehta vs. State of Tamil Nadu\textsuperscript{125}, a Public Interest Litigation was filed by the petitioner before the Supreme Court alleging that children below the age of 14 years were employed in match factories in Tamil Nadu violating the provisions of the Child Labour (Protection and Regulation) Act, 1986. These children were asked to work at a place where the manufacturing process was going on for the production of matchsticks. Besides, it is also alleged that the children were not provided any facilities of recreation, education, intervals and canteen facilities as provided under the Factories Act. The Supreme Court took cognizance of these problems and the dangerous situation in

\begin{itemize}
\item \textsuperscript{123} AIR 1978 SC 597
\item \textsuperscript{124} AIR 1993 SC 2178
\item \textsuperscript{125} AIR 1997 SC 699
\end{itemize}

The Court reiterated its decision in Bandhua Mukti Morcha v. Union of India In this case, for the petition for consideration was the employment of children in the carpet industry in the State of Uttar Pradesh. After referring to Article 24 and a number of Directive Principles, the Supreme Court has observed:

"It would, therefore be incumbent upon the State to provide facilities and opportunities as enjoined under Articles 39(e) and (f) of the Constitution, and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment—either forced or voluntary—is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation."

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which the children were placed and issued directions to the State Government to take immediate steps to liberate them from their employer. The State should take responsibility to provide free and compulsory education to these children till they attain the age of 14 years. The Court, however, pointed out that, the children may be employed in the process of packing in such place where manufacturing process does not take place and to provide 60% of the prescribed minimum wage for an adult employee of the factories doing the same nature of work. Besides, the State Government should set up a welfare fund for the improvement and development of the quality of life of the children. The Court also directed the State Government to constitute a committee to supervise whether the Court’s directions are strictly implemented or not.

Article 24 prohibits the employment of a child below the age of fourteen years to work in any factory or mine, or in any other hazardous employment. The Supreme Court has emphasized in Asiad126 that Article 24 embodies a Fundamental Right "which is plainly and indubitably enforceable against every one." By reason of the compulsive mandate in Article 24, no one can employ a child below the age of 14 years in a hazardous employment like construction work. The contractors are thus under a constitutional mandate not to employ any child below 14 years on construction work. It is also the duty of the Union Government, State Governments and other government bodies to ensure that the contractors to whom they have entrusted construction work also obey this obligation.

The Court has reiterated this ruling in Labourers Working on Salal Hydro-Project v. State of Jammu and Kashmir.127 Construction work being hazardous employment, children below 14 cannot be employed on any such work because of the constitutional prohibition contained in Article 24. The Court has directed the Central Government to enforce this prohibition. It has generally told the Government to persuade the

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126 The people’s Union for Democratic Rights vs. Union of India AIR 1982 SC 1473
127 AIR 1984 SC 177
workmen to send their children to school and provide for free education there. The Court realised that in the prevailing socio-economic development of the country, prohibition of child labour completely would not be acceptable to large masses of the people because of their poverty. Thus, the Court has observed:

"We are aware that the problem of child labour is a difficult problem. The possibility of augmenting their meagre earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop-outs from the schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate, the incidence of child labour.\textsuperscript{128}

The Supreme Court has emphasized in Lakshmi Kant v. Union of India\textsuperscript{129} upon the great importance of child welfare in the country. Accordingly, the Court has taken opportunity to lay down guidelines for adoption of Indian children by foreign parents as there is no statutory enactment for the purpose.

A large number of Indian children are adopted by foreign parents. There have been complaints that these children are maltreated in foreign lands after adoption. Pointing to Articles 15(3), 24 and 39(e) and (f), the Court has said: "The Constitutional provisions reflect the great anxiety of the Constitution makers to protect and safeguard the interests and welfare of children in the country." Accordingly, the Court has taken the opportunity to lay down guidelines for adoption of Indian children by foreign parents as there was no statutory enactment for the purpose.

The Court has emphasized that the primary purpose of giving the child in adoption must be his own welfare, and, therefore, great care must be

\textsuperscript{128} Ibid at 183  
\textsuperscript{129} AIR 1984 SC 469
exercised in permitting the child to be given in adoption to foreign parents.

4.5 PROTECTION OF ENVIRONMENT

"The Stockholm Declaration proceeded to declare the principle": State of common conviction that the man has fundamental right to freedom, equity and adequate conditions of life permitting life of dignity and well being and bears solemn responsibility to protect and improve the environment for present and future generations. The natural resources are common to all and must be safeguarded for the benefit of present and future generations. The capacity of the earth to produce vital renewable resources must be maintained and wherever practicable restored and improved. The discharge of toxic substances and the release of heat in the quantities and the concentration should not exceed the capacity of the environment to tender them harmless. The states should take positive steps to prevent pollution of the seas by substance hazardous to human health, living resources and marine life. The economic and social development is essential. It should however be such that would not adversely affect the present or future development potential nor should hamper attainment of better living condition for all. The resources must be made available to preserve and improve the environment. A rational management of resources should be ensured to make development compatible with a need to protect and improve the human environment for the benefit of the population. The planning should be rational, to avoid adverse effect on environment and obtaining maximum social economic and environmental benefits. Science, technology and education should be applied for identification, avoidance and control of environmental risks

The Supreme Court and various High Courts have shown keen interest in the protection of environment. The courts, since early 1980s, have not only successfully worked towards attaining sustainable development but have also evolved new principles of environmental law. It will not be

Justice Sunil Ambwani: Environmental Justice: Scope and Access AIR-2007 (J) p- 49
wrong to say that most of the development of environmental jurisprudence in India is mainly through judicial decisions.

The Constitution of India provides for the protection of environment under Article 48-A, a part of Directive Principles of State Policy. It states that, “the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife in the country”.

Article 51-A (g) imposes a Fundamental Duty on the citizens to protect and improve the natural environment. However, the Supreme Court while interpreting the provisions contained in Sec 48-A has elevated the provisions contained in Article 48-A to the status of a Fundamental Right.

The higher judiciary has played a very positive role in the protection of environment. It has taken the necessary action where the Legislature and the Executive have failed in the performance of their duties.

Rural Litigation and Entitlement Kendra, Dehardun and Others vs. State of U.P. & Other is the first case in which the Supreme Court has expressed its concern about the protection of environment. In this case the Supreme Court has observed:

“This is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussorie Hill range forming parts of Himalayyas but also in their implication to the welfare of generality of people, living

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AIR 1985 SC 652. In this case a group of citizens wrote to the Supreme Court against progressive mining which denuded the Mussorie hills of trees and forest cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley. The Court ordered the letter to be treated as PIL under Article 32 of the Constitution. In this case, the Court appointed “expert committees” to advise the bench on technical issues. On the basis of the committee report, the court ordered the closure a number of lime-stone quarries. MC Mehta vs. Union of India AIR 1987 SC 1086
in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasize the need for reconciling the two in the larger interest of the country.

The court was also conscious of the consequences of the order which rendered the workers unemployed after the closure of the lime-stone quarries and caused hardship to the lessees. Therefore the court observed:-

"This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazards to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment."

In the case of Shri Sachidanad Pandey vs State of West Bengal132 the Supreme Court has laid down that "wherever a problem of ecology is brought before the Court, the Court is bound to bear in mind Articles 48-A and 51-A (g. In this case, the Court held that "the court is not to shrug its shoulders and say that priorities are a matter of policy, so it is a concern of the policy-making authority."

In Virendra Gaur Vs state of a Haryana133 The Supreme Court held that the word ‘environment’ is of broad import, which brings within its ambit hygienic atmosphere and ecological balance. It was further held by the Court that a hygienic environment is an integral part of the right to healthy life and it would be impossible to live with human dignity without healthy environment. It is the duty of both the citizens and the state to maintain a hygienic environment.

The Supreme Court further held: The enjoyment of life and its attainment including right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free

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132 AIR 1987 SC 1109
133 (1995) 2 SCC 577
from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions, which pollute environment, should be regarded as violative of Article 21 of the Constitution.

In another important case Dr. B.L. Wadhera Vs. Union of India 134, the Supreme Court emphasized that the residents have a constitutional as well as a statutory right to a clean city. The Supreme Court gave directions to the Municipal Corporation of Delhi and other authorities for the disposal of garbage at proper places and to take appropriate steps to tackle the problem of pollution effectively.

The Supreme Court in its earlier cases treated the right to live in pollution free environment as fundamental right to life under Article 21 of the Constitution and the Andhra Pradesh High Court in the case of T Damadar Rao135 expressly recognized the right to live in healthy environment as a parts of the Fundamental Right to Life under Article 21 of the Constitution.

M.C. Mehta vs Union of India136 M.C. Mehta, an environmentalist, filed a Public interest litigation before the Supreme Court of India, seeking

134 AIR 1996 SC 2969
135 AIR 1987 AP 181; in this case MC of Hyderabad has allowed that the land kept for recreational park to be used for constructing residential houses by LIC and income tax department.
136 (1986) 2 SCC 176 The main question for the consideration of the court was:- Whether the caustic chlorine plant should be directed to be shifted at some other place or it should be allowed to be restarted by management of Shri Ram subject to certain strict conditions?
To decide this question, the court took the following points into consideration. It is true that chlorine gas is dangerous to the life and health of the community and if it escapes either from storage tanks or from filled cylinders etc. in the course of its production, it is likely to affect the health and well-being of workmen and the people living in its vicinity.
Secondly, a permanent closure of the plant would render approximately 4000 of its workers unemployed.
Thirdly, the Delhi Water Supply Undertaking, which gets its supply of chlorine from this plant, would also have to find alternative sources of supply and such source may
closure of Shri Ram's caustic Chlorine and Sulphuric Acid plant (located in thickly populated parts of Delhi.

Trying to strike a balance between Industrial development and environment protection, the court held that, "When Science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is an element of hazard or risk inherent in the very use of science and technology and it is not possible to eliminate such hazard or risk altogether".

Keeping in mind the concept of sustainable development, the court held in M.C. Mehta Vs Union of India¹³⁷ that:-

It is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of industries. Even if hazardous, these kinds of industries have to be set up, as they are essential for economic development and advancement of well being of the people.

The court allowed the said plant to be re-started subject to certain conditions,¹³⁸

be quiet distant from Delhi. The production of the downstream product would also be seriously affected, resulting in, to some extent, short supply of these products.

¹³⁷ AIR 1987 SC 965 also in Goa vs Diksha Holding Pvt. Ltd. AIR 2001 SC 184

¹³⁸ The important ones among them, being:

1. Appointment of expert committee to monitor the operation and maintenance of the plant.
2. The chief inspector of factories or his nominee, possessing the necessary expertise in inspection of chemical factories is required to inspect the caustic plant once in a week the plant will be supervised once in a week by the Central Board for Prevention and Control of Water and Air pollution. The Chairman and Managing Director of the company will be personally liable to pay compensation on death or injury to worker or the people living in vicinity, in case of escape of chlorine gas. The workers in the plants are to be properly trained and instructed and are also required to wear helmets, gas masks or safety belt while working as also workers are to be educated and informed as to what precautions are to be taken in case of leakage of chlorine gas.
The Court, while deciding the case, has laid emphasis on sustainable development; it has tried to harmonise social and economic development along with the protection of environment. The protection of environment does not mean a stoppage of development activities. In the same case it held:

“While it is a rule that nature will not tolerate, after certain degree, its destruction and it will have its toll. Though, it may not be felt in present times and the present day society has the responsibility towards the posterity so as to allow normal breathing and living in cleaner environment. But that does not by itself mean and imply the stoppage of all projects”. The Court further held that the harmonization of the two - namely the issue of ensuring both environment and development - should be the order of the day and the need of the hour.

Polluter Pays Principle:
The Supreme Court in the case of Council for Enviro -Legal Action vs Union of India 139 has recognized the polluter pays principle (PPP) 140. The polluter pays principle (ppp) as interpreted by the Supreme Court means that “absolute liability for harm to the environment extends not only to compensate the victims of pollution but also to recover the cost of restoring the environmental degradation.” Thus it includes environmental costs as well as direct costs to people or property. Remediation of the damaged environment is part or the process of sustainable development and as such the polluter is liable to pay the cost of individual suffering as well as the cost of reversing the damaged ecology i.e. “Responsibility for repairing damages is that of offending industry.”

The management of SRFFS is to deposit in Supreme court a sum of Rs. 20 lakhs as and by way of compensation claims made by and on the behalf of victims of oleum gas.

139 (1996) 5 SCC 281; also see Vellore citizens welfare forum vs Union of India (1996) 5 SCC 647
The Vellore Citizens Welfare Forum vs Union of India is a significant judgment, wherein the Supreme Court has recognized the precautionary principle and the polluters pays principle. The Court has also reiterated the concept of sustainable development. In this cases, tanneries in Tamil Nadu were discharging their untreated trade effluents in agriculture fields, waterways and in the river Palar which, in fact, was the main source of water supply to the residents of the area. This caused environmental degradation in the area and scarcity of potable water. The question for consideration before the Court was that whether the tannery industry, which is one of the major foreign exchange earners, be allowed to continue its operation at the cost of life of lakhs of people?

The Supreme Court after taking note of the importance of pollution-free environment held that there is no doubt that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather, accounting for approximately 80% of the country’s export. Although the leather industry is of a great importance to the country as it not only earns foreign exchange for the country but provides employment avenues, yet it has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be permitted to expand or even to continue with the present position unless it tackles by itself the problem of pollution created by the said industry.

According to Court;

\[1996\] 5 SCC 647 More recently the Supreme Court invoked the 'public trust doctrine' evolving methods for arriving at 'Net Present Value' to be paid by the State for the diversion of forest land to non-forest use to be paid to Compensatory Afforestation Fund Management and Planning Agency (CAMPA) in T. N. Godavarman AIR 2005 SC 4256; issued directions for disposal of imported contaminated waste oil. In Research Foundation For Science (2005) 13 SCC 675; Rationalized the meat export promotion policy and regulation of abattoirs in Akhil Bharat Goseva Sangh AIR 2006 SC 1832; and intervened in town planning providing for conversion of large open lands of cotton mills in Mumbai for public housing, balancing ecological factors on the principles of 'Sustainable Development' in Bombay Dyeing Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group AIR 2006 SC 1489.

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The Court, while recognizing and applying the precautionary principle in the context of municipal law, held: Precautionary principle means:

1. Environmental measures by the state government and the statutory authorities must anticipate, prevent and attack the cause of environmental degradation.

2. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

3. The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

Further the Court observed that “The polluter pays principle” as interpreted by this Court in Council for Enviro- Legal Action Vs. Union of India\(^\text{142}\) means the absolute liability for the harm to the environment extends not only to the cost of restoring the environmental degradation, but also to the remediation of the damaged environment, which is a part of the process of “sustainable development” and as such, the polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology.

For prevention, abatement and control of pollution, the Court directed as under:

Constitution of authority having all necessary powers to deal with the situation created by tanneries and other polluting industries in the state. The authority is to be headed by a retired High Court Judge and other members, who preferably have experience in the field of pollution control and environmental protection (to be appointed by the Central Government).

\(^\text{142}\) (1996) 5 SCC 281
1. This authority shall have the power to assess the loss to ecology/environment in the affected area and shall assess the compensation to be paid to the said individuals/families.

2. The authority is required to calculate compensation under two heads namely:
   - For reversing the ecology and
   - For payment to individuals

3. The authority shall also have the power to direct closure of industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him.

As regard polluter pays principle, the Court held such that “an industry may have set up the necessary pollution control devices at present but it shall be liable to pay for the pollution generated by it in the past, which has resulted in environmental degradation and suffering to the residents of the area.

The Court further directed the creation of “Environment Protection Funds” and all the tanneries in the 5 district of Tamil Nadu were directed to deposit a sum of Rs. 10,000/- each with the collector/District Magistrate of the area. The District Magistrate of each district has the power to utilize the funds for compensating the affected persons as identified by the authorities and for restoring the damaged environment.

The court further issued directions to constitute a special bench called “Green Bench” in the state of Madras to deal with matters connected with the environment. The Supreme Court has awarded exemplary damages in cases related to pollution and degradation of environment.

In N.D. Jayal vs. Union of India143 the Supreme Court has reiterated that the right to clean environment and right to development are integral part

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143 (2004) 9 SCC 362
of human rights. Sustainable development is a means to achieve the object and purpose of the Environment (Protection) Act, as well as protection of life envisaged under Article 21. The construction of Tehri Dam is a component of development and, therefore, strict compliance with the Act is absolutely necessary.

In T.N. Godavarman vs Thirumalpad case\textsuperscript{144}, the Supreme Court emphasized the duty of the government to protect the environment. The Supreme Court further held that the right to live was a right to an environment adequate for health and well being.

Further relying upon the right to health under Article 21, in Murli S. Deora vs. Union of India\textsuperscript{145}, the Court directed a prohibition on smoking in the following public places:

1) auditoriums ii) hospitals buildings iii) health institutions iv) educational institutions v) libraries vi) court buildings vii) public offices viii) public conveyances including railways.

Environment Courts

The environmental issues are complex which need to be dealt with on the point of scientific and technical relevance. The Courts, in such situation, find it difficult to form its own independent opinion and take recourse to the help of expert committees, which is a long and time consuming exercise. In order to overcome such difficulties the Supreme Court has made suggestion for setting up of environment Courts for speedy disposal of environmental cases.

In M.C Mehta vs. Union of India\textsuperscript{146}, the Supreme Court has suggested the setting up of Environmental Courts on a regional basis with one professional Judge and two experts drawn from Ecological Science research group, keeping in view the nature of case and expertise

\textsuperscript{144} (2002) 10 SCC 606
\textsuperscript{145} (2001) 8 SCC 765
\textsuperscript{146} AIR 1987 SC 965 at 982
required for its adjudication. There would, of course, be right to appeal before the Supreme Court from the decision of Environmental Courts. In Vellore Citizens Welfare Forum vs. Union of India 147. Popularly known as T.N. Tanneries Case, the Supreme Court has directed the High Court to constitute Green benches to deal with cases relating to environmental matters.

In Indian Council for Enviro-Legal Action vs Union of India.148 Popularly known as H-acid case, the Supreme Courts has reiterated the need for creating “Environmental Courts” which alone should be empowered to deal with all matters, civil and criminal relating to the environment. These Courts should be managed by legally trained persons/judicial officers and should be allowed to adopt summary proceedings. In A.P. Pollution Control Board Vs Prof M.U. Nayudu149 and A.P. Pollution Control Board-II vs Prof. M.V. Naydu150, the Court again considered the question of need for constitution of environmental Courts.

It is submitted that now the green benches are already functioning in some of the High Courts like Punjab and Haryana, Calcutta, Madras, Madhya Pradesh and Allahabad High Court.

Environment Awareness

In M.C. Mehta Vs Union of India151, to create awareness about the protection of environment, the Supreme Court directed the central government to introduce Environmental Studies as a subject in educational institutions and to observe ‘keep the city clean week’. The Supreme Court held that: having regard to the grave consequences of pollution of water and air and natural need of protecting and improving the natural environment which is considered to be one of the fundamental duties under Article 51 A (g), we are of the view that it is

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147 (1996) 5 SCC 647 at 669
148 (1996) 3 SCC 212 at 252
149 (1999) 2 SCC 718
150 (2001) 2 SCC 62 at 84
151 AIR 1988 SC 1115
the duty of the central government to direct that all the educational institutions throughout India to teach at least for one hour in a week, lessons relating to environment including forest, lakes, rivers and wildlife upto to 10th class. It also recommended training of teachers who will teach this subject by introduction of short-term courses and directed that this should be done throughout India.

For creating national awareness regarding the problem, the Court suggested the observance of “Keep the City Clean” “Keep the Town Clean Week”, “Keep the Village Clean” in every city, town and village across India. The Court further suggested that the organization of these weeks should be the entrusted to local bodies having jurisdiction over the area in question152.

Thus one can safely conclude that the Supreme Court has played an active role in the protection of environment. The Supreme Court is of the view that the objective of all laws on environment should be to create harmony between development, on one hand, and protection and preservation of natural environment, on the other hand. No doubt the Judiciary has played the role of a catalyst and thereby speed up the process of environment protection. It will not be wrong if one says that most of the development of Environmental Law in India is mainly through judicial decisions

4.6 PROTECTION OF DEMOCRATIC CHARACTER:
The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular Democratic Republic. Democracy is the basic feature of the Indian Constitution.153

152 Keeping in mind lack of awareness about environment among students which is leading to serious ecological disaster, the Division Bench of Justice G.S. Singhvi and Kiran Anand Lal of Punjab and Haryana High Court in the Judgment reported in Hindustan Times Oct, 15, 2002, directed the Punjab Education Board for incorporating environmental studies in its syllabi from class VI to X.

153 People’s Union for civil liberties vs Union of India JT (2003) SC 528
Democracy is sustained by free and fair elections. Only free and fair elections to the various legislative bodies in the country can guarantee the growth of a democratic polity. It is the cherished privilege of a citizen to participate in the electoral processes which place persons in the seat of power.

India has been characterised as the biggest democracy in the world because of the colossal nature of the elections held in the country. At a general election, an electorate of millions goes to the polls to elect members for the Lok Sabha, State Legislative Assemblies, and the Legislatures of the Union Territories. Free and fair election has been held to be a basic feature of the Constitution.154

The Supreme Court has played an important role in protection of democracy. In a constitutional democracy election provides an opportunity to ascertain the popular will regarding governance of the country. The Supreme Court through its significant decisions has contributed substantially towards:

- Ensuring free and fair elections155
- Right of the electorate to information about the antecedent of candidates and Freedom of politics from criminalization156
- Upholding rule of law157 and
- Establishing supremacy of constitution over electoral verdict 158

Freedom of information

Freedom of speech and expression is basic to and indivisible from a democratic polity. A true democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens

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154 Indira Nehru Gandhi vs Raj Narain AIR 1975 SC 2299
158 B.R. Kapoor vs State of Tamil Nadu (2001) 6 SCALE 312

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are well informed on all sides of the issues, in respect of which they are called upon to express their views

In Union of India v Association for Democratic Reforms\textsuperscript{159} the Supreme Court observed that the citizens of India have a right to know every public act, everything that is done in public way by the public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision making process. The right to get information in a democracy is recognized throughout and it is a natural right flowing from the concept of democracy. Article 19 (1) (a) of the constitution guarantees to all citizens freedom of speech and expression\textsuperscript{160}

However, right to receive information from public authorities, is not an absolute right but is subject to statutory and constitutional restrictions. For instance, freedom to speech and expression as provided under Article 19(1) (a) of the constitution is subject to reasonable restrictions as provided under Article 19(2). Similarly, right to know under Article 21 can be restricted by a procedure established by law which is just, fair and reasonable. In Indira Jaising v Registrar General, Supreme Court of India\textsuperscript{161} an inquiry report was made by the committee to the CJI, in respect of alleged involvement of sitting judges of the High Court of Karnataka in certain incidents. The petitioner sought publication of the inquiry report. The Supreme Court held that it is not appropriate for the petitioner to approach this court for relief or direction for release of the report, for what the CJI has done is only to get information from peer judges of those who are accused and the report made to the CJI is wholly confidential. It is purely preliminary in nature, adhoc and not final. The court further held that in a democratic framework free flow of information to the citizens is necessary

\textsuperscript{159} (2002) 5 SCC 294

\textsuperscript{160} At the same time Article 19(2) permits the state to make any law in so far as such law imposes reasonable restrictions on the exercise of rights under Article 19 (1) (a) sovereignty and integrity of India, security of state friendly relation with foreign states, public order, decency, morality, contempt of the court, defamation and incitement of offence.

\textsuperscript{161} (2003)4 SCALE 643
for proper functioning, particularly in matters, which form part of public record. The right to information is, however not absolute. There are several areas where such information need not be furnished. The inquiry ordered and the report made to the CJI being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The court thus rejected the contention to release the said report.

Similarly in People's Union for Civil Liberties v. Union of India162 is a very significant decision. Right of information/to know vis-a-vis privilege of the Government to withhold certain information in interests of integrity and security of India, was the issue for consideration. The appellants sought disclosure of information relating to purported safety violations and defects in various nuclear installations and power plants situated across the country. The respondents claimed privilege under Section 18(1) of the Atomic Energy Act, 1962, contending that the same had been classified as "secret" as it pertained to nuclear installations in the country which included several sensitive facilities involving activities of a highly classified nature and if the same were directed to be published, it would cause irreparable injury to the interest of the State and also would be prejudicial to national security. It was held that right of information to know is a facet of the right of "speech and expression" contained in Article 19(1)(a) and is indisputably a fundamental right but reasonable restriction on its exercise is always permissible in the interest of the security of the State.

4.7 ELECTION LAWS

In a constitutional democracy, elections provide an opportunity to ascertain the popular will regarding the governance of the country. In ensuring free and fair elections the role of the Supreme Court is substantial. Several controversial issues and disputes have emerged since the first general elections. Resolving the disputes so as to reflect the true spirit of democracy was a challenge before the Supreme Court. The court has made substantial contribution to the development of election law by giving dynamic interpretation to the provisions of law. In addition, it has resisted attempts

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162 (2004) 2 SCC 476
to amend election laws that would have involved undermining the democratic values.\textsuperscript{163}

The concern of the Supreme Court in ensuring free and fair elections is visible in its decision in Indira Nehru Gandhi v Raj Narain\textsuperscript{164}

In this case the Supreme Court examined the validity of 39th amendment Act along-with election appeal. The Supreme Court declares the Amendment Act null and void’ since it would destroy the basic structure of the Constitution. Out of the five judges on the bench, H.R. Khanna, K.K. Mathew and Y.R. Chandrachud, JJ, categorically stated that democracy is the basic feature of the Constitution. Khanna and Mathew, JJ, pointed out that free and fair elections and effective machinery for adjudication of election dispute is an essential component of democracy. According to the view taken by Khanna, J:

“Democracy can indeed function only upon faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion.”\textsuperscript{165}

This decision of the court established two facts. First, the court is not in favour of making any change in the constitutional scheme for election and adjudication of election disputes in ways that hamper the concept of free and fair election. Secondly, the court is keen on resisting any attempt to destroy the democratic system and the court is not bothered about the political consequences while guarding this basic value of the constitution.

\textsuperscript{163} K.C. Sunny: Election laws: Fifty years of SC in India (2000) p 210

\textsuperscript{164} 1975, Supp. SCC 1 The case came up in the form of an appeal against the decision of the Allahabad High Court setting aside the election of then Prime Minister Indira Gandhi from the Rae Bareli constituency. While the appeal was pending before the Supreme Court, Parliament passed the Constitution (Thirty-Ninth Amendment) Act. By 39th Amendment Act Article-329A was introduced which provided that election of the Prime Minister & Speaker cannot be challenged in any court

\textsuperscript{165} ibid at 87
Judicial activism is also visible in interpreting the provisions of law relating to election expenses and attempt by the political leadership to nullify the effect of such activist approach of the Supreme Court, by way of amending the provisions of law.

Section 77(1) of the Representation of the People Act, 1951 provides that every candidate at an election shall, either by himself or his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent, between the date on which he has been nominated and the date of declaration of result thereof, both dates inclusive Section 77(3) prescribes that the total of the amount mentioned in clause (1) shall not exceed such amount as may be prescribed.

Whether expenditure by a candidate's political party, friends, and relatives, etc. could be treated as the expenses incurred or authorized by the candidate was the issue in many election petitions. The court's earlier view was that expenses incurred by the political party, friends, etc. to advance the election prospects of a candidate did not fall within section 77. In Kanwar Lal v Amarnath the court examined the various aspects of the problem and concluded that 'the availability of disproportionately larger resources is also likely to lend itself to misuse or abuse by the political party or individual possessed of such resources, undue advantage over other political parties or individuals. According to the court it produces anti-democratic effects in that a political party or individual backed by affluent or wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or, wealth. About the evil consequence of the mobilization of money by political parties through donations the court observed:

"It is obvious that pre-election donations would be likely to operate as post-election promises resulting ultimately in the casualty of the interest of the common man, not so much ostensibly in the legislative process as in the

\(^{166}\) AIR 1975 SC 308
\(^{167}\) Ibid at 315
implementation of laws and administrative or policy decisions. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process.168

It was rightly held by the court: "When a political party sponsoring a candidate incurs expenditure in connection with his election as distinguished from expenditure on general party propaganda and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer save in special circumstances, that he implicitly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure but his political party has done so."169

The decision reflects the social commitments of the judiciary and its role as protector of the noble values of democracy. However, the amendment introduced in 1974 added an explanation to section 77 exempting the expenditure incurred or authorized by a political party or any other association or body of persons or any individual (other than the candidate or his election agent) from the purview of the expenditure incurred or authorized under the section. In effect the amendment legalized the evil practice of spending enormous amounts in election by candidates under the pretext that the expenditure had been incurred by the political party sponsoring them. The creative contribution of the Supreme Court to purify the election process had been nullified by the political leadership. However the court stood its ground.170

In Gadakh T.K. v Balaseh Vikhe Patil,171 the court emphasized the need to amend the Representation of the People Act, 1951, so as to repeal the explanation to section 77, pointing out that the spirit of the provision

168 ibid 315 Bhagwati J, for himself and R.S.Sarkaria J
169 ibid
171 AIR 1994 SC 678
suffered violation through the escape route provided by the explanation. In Gajanan Krishnaji Bapat v Dattaji Raghobaji\textsuperscript{172} A.S. Anand, J, emphasized the need to prescribe by 'rules the requirements of maintaining true and correct accounts of the receipts and expenditure by political parties by disclosing the sources of receipt as well. In Common Cause v Union of India\textsuperscript{173} the Supreme Court had shown an activism in preventing the vice of money power in election by way of interpreting section 77 of the Representation of the People Act in the background of legal provision relating to the receipt of donations by political parties. The court gave the following directions

1. That the political parties were under a statutory obligation to file return of income in respect of each assessment year in accordance with the provisions of the Income Tax Act.

2. That the income-tax authorities have been wholly remiss in the performance of their statutory duties under law. The said authorities have for a long period failed to take appropriate action against the defaulter political parties.

3. The Secretary, Ministry of Finance, Department of Revenue, the Government of India shall have an investigation / inquiry conducted against each of the defaulter political parties and initiate necessary action in accordance with law including action under section 276-CC of the Income Tax Act.

4. The Secretary, Ministry of Finance, Department of Revenue, Government of India shall appoint an inquiry body to find out why and in which circumstances the mandatory provisions of the Income Tax Act regarding filing of return of income by the political parties were not enforced. Any office/ officers found responsible and remiss in the inquiry be suitably dealt with in accordance with the rules.

\textsuperscript{172} AIR 1995 SC 2300

\textsuperscript{173} AIR 1996 SC 3081
5. A political party which is not maintaining audited and authenticated accounts and has not filed the return of income for the relevant period, cannot ordinarily, be permitted to say that it has incurred or authorised expenditure in connection with the election of its candidates in terms of Explanation 1 to section 77 of the Representation of the People Act.

6. The expenditure (including that for which the candidate is seeking protection under explanation 1 to section 77 of the Representation of the People Act), in connection with the election of a candidate—to the knowledge of the candidate or his election agent—shall be presumed to have been authorized by the candidate or his election agent. It shall, however be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of it was in fact incurred by the political party to which he belongs or by any other association or body of persons or by all individual (other than the candidate or his election agent). Only when the candidate discharges the burden and rebuts the presumption would he be entitled to the benefit of Explanation 1 to section 77 of the Representation of the People Act.

7. The expression 'conduct of election' in Article 324 of the Constitution of India is wide enough to include in its sweep, the power of the Election Commission to issue in the process of the conduct of election—directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorised by the political parties in connection with the election of their respective candidates.\textsuperscript{174}

It would appear that the evil consequences of the explanation to section 77 which exempted the expenditure incurred by a person, party or company other than the candidate from the expenditure incurred by a candidate for the purpose of election expenses have been reduced by the decision of the court. The judicial approach towards the law relating to election expenses clearly establishes the commitment of the judiciary in maintaining the purity and sanctity of elections.

\textsuperscript{174} Ibid 3090

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While interpreting the provisions of law relating to corrupt practices in election, the Supreme Court showed its commitment to ensuring free and fair elections. In Bhanu Kumar v M. Sukhndia\(^\text{175}\) the court formulated certain guiding principles to determine this type of corrupt practice in the following words:

“Ordinarily amelioration of grievances of the public appears to be innocuous. If, however, there is evidence to indicate that any candidate at an election abuses his power and position as a Minister in the Government by utilising public revenues for conferring advantage or benefit on a particular group of people for the purpose of obtaining their votes, different considerations will arise. The Court is always vigilant to watch not only the conduct of the candidates and to protect their character from being defamed but also to see that the character and conduct of the public is not corroded by corrupt motive or evil purposes of candidates. The genuine and bona fide aims and aspirations of candidates have to be protected on the one hand and malafide abuse of power will have to be censured on the other.”

The Supreme Court held that publication of false statements in relation to a candidate’s personal character and conduct is a corrupt practice under section 123(4) of the Representation of the People Act. In deciding election petitions containing allegation of this corrupt practice the relevant point is whether the statement is related to the candidate’s personal character and conduct or his public conduct. In Inder Lal v LaL Singh\(^\text{176}\) Justice Gajendragadkar, observed:

“In discussing the distinction between the private character and the public character, sometimes reference is made to the ‘man beneath the politician’ and it is said that if a statement of fact affects the man beneath the politician it touches private character and if it affects the politician, it does not touch his private character.... But there may be cases on the borderline where the false statement may affect both the politician and the man beneath the politician and it is precisely in ‘dealing with cases on the borderline’ that difficulties are experienced in determining whether the impugned false statement

\(^{175}\) AIR 1971 SC 2025
\(^{176}\) AIR 1962 SC 1156
constitutes a corrupt practice or not. If, for instance, it is said that in his public life the candidate has utilised his position for the selfish purpose of securing jobs for the relations, it may be argued that it is criticism against the candidate in his public character and it may also be suggested that it nevertheless affects his private character.”

The learned judge took the view that false allegation that a candidate had offered bribe for electoral gains could be treated as statement relating to personal character and conduct.

Regarding the corrupt practice of procuring the assistance of government servants, S.R. Das, J, highlighted the policy of law in the following words:

“The policy of the law is to keep government servants aloof from politics and also to protect them from being imposed on by those with influence or in a position of authority and power, and to prevent the machinery of Government from being used in furtherance of a candidate's return. But at the same time it is not the policy of the law to disenfranchise them or to denude them altogether of their rights as ordinary citizens of the land. The balance between the two has, in our opinion, been struck in the manner indicated above”.

The Supreme Court has made an other important pronouncement in the case of B.R. Kapoor Vs. State of Tamil Nadu. In this case the question for consideration of Supreme Court was whether in a parliamentary democracy the will of the people as expressed through majority should prevail over the constitution and in such matters courts cannot interfere?

The nomination of Jayalaitha for election to State legislature was rejected on the ground of her conviction for certain offences under I.P.C. and prevention of corruption Act. She was sentenced to three years rigorous imprisonment. High Court has suspended sentence but not her conviction pending her appeal. In

\[177\] Ibid 1160
\[178\] Ibid
\[179\] (2001) 6 SCALE 312
the election her party AIADMK, which had projected her as Chief Ministerial nominee won by large majority and she was sworn in as Chief Minister of the State.

The Supreme Court held that:
The constitution prevailed over the will of the people as expressed through the majority party. The will of the people as expressed through majority party prevails only if it is in accordance with the constitution.

“... . . . . This being the position the action of the majority of the elected members of a political parties in choosing their leader to head the government, if found to be contrary to the constitution and the laws of the land then the Constitution and the laws must prevails over such unconstitutional decision.\textsuperscript{180}"

Right to know about antecedents of electoral candidates:
In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided, its result, if pending -whether charge has been framed or cognizance has been taken by the court. There is no necessity of suppressing the relevant facts from the voters.

In Union of India v Association for Democratic Reform\textsuperscript{181} the Supreme Court recognized, this right of the voter.

This is a significant decision number of issues. It was held that the republican and democratic form of government is a part of the basic structure of the Constitution; that the right to freedom of speech and expression in Article 19(l)(a) includes the right to casting of vote and the right to know the

\textsuperscript{180} Ibid at 345
\textsuperscript{181} (2002)5 SCC 294
antecedents including criminal past of a candidate to be elected as a member of Parliament or State Assembly; that the court cannot ask the legislature to amend the law nor can it issue directions against the existing law, it can ask the appropriate authority to fill any vacuum or void in the law; and that the Election Commission has the power under Article 324 to pass such orders as it considers necessary or appropriate for the purpose of conducting free and fair elections. Upholding the directions issued by the High Court the Supreme Court directed the Election Commission to issue an order in exercise of its power under Article 324 requiring each candidate seeking election to Parliament or a State Legislature to furnish information on the following aspects as a necessary part of its nomination paper:

1. Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - whether he is punished with imprisonment or fine.
2. Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
3. The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants.
4. Liabilities, if any, particularly, whether there are any overdue of any public financial institution or government dues.
5. The educational qualifications of the candidate.

In P.U.C.L v Union of India the Supreme Court held that in an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern the respective rights of the parties. However, voter’s Fundamental Right to know antecedents of a candidate is independent of statutory rights under the election laws. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures. The court further observed that securing information on the

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182 JT 2003 (2) SC 528
basic details concerning the candidates contesting for elections to the Parliament or State legislatures promotes freedom of expression and therefore the Right to information forms an integral part of Article 19(1) (a).

The success of democracy depends on the due conduct of elections so as to ensure the reflection of the true popular will. Keeping this in view, while interpreting the provisions of law defining the corrupt practices of bribery, publication of false statements and procuring the assistance of government servants, the Supreme Court has formulated well-defined guiding principles to determine whether a particular action could be treated as corrupt practice or not. While formulating these principles the court has examined the rationale of treating a particular action as corrupt practice in election, highlighting the theoretical foundation of various concepts in election law. In addition to alleviating the evil consequences of the lethargy of the political leadership, its suspect actions in introducing law reforms in certain areas like election expenses have been diluted by the Supreme Court, by way of judicial activism. The decision of the court in Indira Nehru Gandhi v Raj Narain\textsuperscript{183} clearly establishes that in India the guardian of democracy is not the legislative wisdom but the wisdom of the highest court of the land. One may expect that the Supreme Court will continue to guard our democracy in the coming century also.

4.8 RULE OF LAW

The doctrine of Rule of Law\textsuperscript{184} is ascribed to Dicey\textsuperscript{185}. It has no fixed or Articulate connotation though the Indian courts refer to this phrase time and

\begin{itemize}
\item[] \textsuperscript{183} AIR 1979 SC 2299
\item[] \textsuperscript{184} It included the following three distinct though kindred ideas in Rule of Law:
\begin{enumerate}
\item Absence of arbitrary power: No man is above law. No man is punishable except for a distinct breach of law established in an ordinary legal manner before ordinary courts. The government cannot punish any one merely by its own fiat. Persons in authority do not enjoy wide, arbitrary or discretionary powers. Dicey asserted that wherever there is discretion there is room for arbitrariness.
\item Equality before law: Every man, whatever his rank or condition, is subject to the ordinary law and jurisdiction of the ordinary courts. No man is above law.
\end{enumerate}
\end{itemize}
again. The broad emphasis of Rule of Law is on absence of any centre of unlimited or arbitrary power in the country, on proper structurisation and control of power, absence of arbitrariness in the government. Government intervention in many daily activities of the citizens is on the increase creating a possibility of arbitrariness in State action. Rule of Law is useful as a counter to this situation, because the basic emphasis of Rule of Law is on exclusion of arbitrariness, lawlessness and unreasonableness on the part of the government.

Rule of law does not mean rule according to statutory law pure and simple, because such a law may itself be harsh, inequitable, discriminatory or unjust. Rule of law connotes some higher kind of law which is reasonable just and non-discriminatory. Rule of Law today envisages not arbitrary power but controlled power. Constitutional values, such as constitutionalism, absence of arbitrary power in the government, liberty of the people, an independent judiciary etc. are imbibed in the concept of Rule of Law.

The Indian Constitution by and large seeks to promote Rule of Law through many of its provisions. For example Parliament and State Legislatures are democratically elected on the basis of adult suffrage. The Constitution makes adequate provisions guaranteeing independence of the Judiciary. Judicial review has been guaranteed through several constitutional provisions. The Supreme Court has characterised judicial review as a "basic feature of the Constitution". Article 14 of the Constitution guarantees right to equality before law. This Constitutional provision has now assumed great significance as it is used to control administrative powers lest they should become arbitrary.

The Supreme Court of India has invoked Rule of Law several times in its pronouncements to emphasize upon certain Constitutional values and

(iii) Individual Liberties : The general principles of the British Constitution, and especially the liberties of the individual, are judge-made, i.e., these are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts from time to time.

186 L Chandra Kumar vs Union of India AIR 1997 SC 1125; Delhi Judicial Service Association vs state of Gujrat AIR 1991 SC 2176
principles. For example, in Bachan Singh\(^\text{187}\) Justice Bhagwati has emphasized that Rule of Law excludes arbitrariness and unreasonableness. To ensure this, he has suggested that it is necessary to have a democratic legislature to make laws, but its power should not be unfettered, and that there should be an independent judiciary to protect the citizen against the excesses of executive and legislative power.

In P. Sambamurthy v. State of Andhra Pradesh\(^\text{188}\) the Supreme Court has declared a provision authorising the executive to interfere with tribunal justice as unconstitutional characterising it as "violative of the rule of law which is clearly a basic and essential feature of the Constitution."

In D.C. Wadhwa Vs State of Bihar\(^\text{189}\) the Supreme Court has again invoked the Rule of Law concept to decry too frequent use by a State Government of its power to issue ordinances as a substitute for legislation by the Legislature.

In Yusuf Khan v. Manohar Joshi\(^\text{190}\) the Supreme Court has laid down the proposition that it is the duty of the state to preserve and protect the law and the Constitution and that it cannot permit any violent act which may negate the rule of law.

The two great values which emanate from the concept of Rule of law in modern times are:

1. no arbitrary government; and
2. upholding individual liberty.

Emphasizing upon these values, KHANNA, J., observed in A.D.M. Jabalpur v. S. Shukla\(^\text{191}\)

"Rule of law is the antithesis of arbitrariness...Rule of law is now the accepted norm of all civilised societies... Everywhere it is identified with the liberty of the

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\(^{187}\) Bachan Singh vs State of Punjab AIR 1982 SC 1325
\(^{188}\) AIR 1987 SC 663
\(^{189}\) AIR 1987 SC 579
\(^{190}\) (1999) SCC (Cri) 577
\(^{191}\) AIR 1976 SC1207

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individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order. In every state the problem arises of reconciling human rights with the requirements of public interest. Such harmonization can only be attained by the existence of independent courts which can hold the balance between citizen and the state and compel governments to conform to the law”.

In MC. Mehta vs Union of Mehta192, Supreme Court observed that Rule of law in the essence of democracy.

A significant derivative from 'Rule of Law' is judicial review. Judicial review is an essential part of Rule of Law. Judicial review involves determination not only of the constitutionality of the law but also of the validity of administrative action. The actions of the state public authorities and bureaucracy are all subject to judicial review; they are thus all accountable to the courts for the legality of their actions. In India, so much importance is given to judicial review that it has been characterised as the "basic feature' of the Constitution which cannot be done away with even by the exercise of the constituent power.

4.9 COMBATING CORRUPTION

Prevalent corruption in the society is virtually old wine in new bottles. It is an old saga which has assumed new dimensions with court's intervention. The menace of corruption was noted by the Supreme Court in State of Madhya Pradesh & others, v. Shri Ram Singh,193 wherein it was observed:

"Corruption in a civilised society is a disease like cancer, which if not detected in time is sure to maliganise the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage.

192 2006(3) SCC-399
193 JT 2000 (1) 518
Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

Various scams and scandals unearthed by the intervention of judiciary have unmasked the ugly faces of numerous politicians who indulged in corruption popularly known as “Political Corruption”. When it was found that political interference was hampering the investigative machinery and prosecuting agencies in the performance of their duties, the Supreme Court of India rose to the occasion by taking initiatives in unearthing the political corruption by not only giving directions but also monitoring the investigations. It has to be kept in mind that in cases of political corruption which is done in high secrecy it is very difficult to procure evidence unless intelligent, independent persons of integrity are entrusted with the investigation of the cases.

There is no gainsaying that only with the judicial intervention, various scandals and scams of corruption, bribery and kickbacks were unearthed which disclosed the passing of black money worth millions of rupees to the politicians.\(^{194}\)

The Supreme Court in Vineet Narain v. Union of India\(^ {195}\) issued various directions to the officials of the CBI, Enforcement. Directorate and prosecution agency for ensuring a clean public life and healthy democracy in the country.

The judgment is unique in that it gave details of the progress of the case through various stages and highlights the use of a device of a ‘continuing mandamus’ which the court described as “a new tool forged because of peculiar needs of the matter”. Court virtually controlled the entire investigation is clear from the Perusal of the judgment. First, since the “continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer” and since “merely issuance of mandamus directing the agencies to perform their task would be futile”, the court “decided to issue direction from time to time and keep the matter pending requiring the agency to report the progress of the investigation.


\(^{195}\) AIR 1998 SC 889

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Secondly, the court directed that CBI would not take any instruction from, report to, or furnish any particulars to any authority personally interested in or likely to be affected by the outcome of the investigation into accusation”. Further, it stipulated that “this direction applies even in relation to any authority which exercises administrative control over the CBI by virtue of the office he holds, without any exception. Thus the court made sure that the executive government, and in particular the Prime Minister’s office to which the CBI had to report, stood completely excluded from any control over the investigation.

Thirdly, any transfer of any officer in the investigation teams of the CBI or the Enforcement Directorate was closely supervised by the court. By an express direction the court precluded any other in the country, including the High court, from entertaining and dealing with any petition that involved the same question or any question connected with it in any manner.

The Supreme Court on November 8th, 1996 slapped exemplary damages of Rs. 60 lakh on the former Housing and Urban Development Minister, Mrs. Sheila Kaul, for her “arbitrary, unconstitutional and malafide” action in allotting 52 shops and stalls in prime location in the capital to her grandsons and close friends in 1995 and quashed all the allotments.

4.10 PRISONER’S RIGHT AND HUMANISATION OF CRIMINAL JUSTICE

The administration of criminal justice and the conditions prevailing in prisons have long been extremely deplorable and sub-human; prisoners are mal-treated; criminal trials are inordinately delayed; police brutality is legendary.

Every day one hears news of police brutality, prison maladministration and inordinately long delay in trial of criminal cases resulting in grave miscarriage of justice. Inspite of the accent on socio- economics justice in the constitution, precious little has been done so far to improve matters in the area of criminal justice.
Administration of criminal justice is a State matter. Fortunately, by reinterpreting Article 21 in Maneka Gandhi, and by giving up the sterile approach of Gopalan, the Supreme Court has found a potent tool to improve matters, and to fill in the vacuum arising from governmental inaction and apathy to undertake reform, in the area of criminal justice. The court has now been seeking to humanise and liberalise the administration of criminal justice.

The Supreme Court has observed in Sunil Batra (II) v. Delhi Administration196 that thanks to Article 21, “human rights jurisprudence in India has a constitutional status and sweep... so that this magna carta may well toll the knell of human bondage beyond civilized limits. Accordingly, the Supreme Court has in a number of cases tested various aspects of criminal justice and prison administration on this touchstone. The protection of Article 21 extends to all persons – persons accused of offences, undertrial prisoners undergoing jail sentences etc., and, thus, all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21.197

In D.B.M Patnaik v. State of Andhra Pradesh,198 some prisoners challenged some restrictions as violating their right under Article 21. The Supreme Court stated that a convict is not denuded of all his fundamental rights. Imprisonment after conviction is bound to curtail some of his rights, e.g., freedom of speech or movement, but certain other rights, e.g., the right to hold property, could still be enjoyed by a prisoner. A convict could also claim that he should not be deprived of his life or personal liberty except according to the procedure established by law.

The Supreme Court has however held that posting of police guards outside the jail, or living of policemen in vacant land adjacent to, but outside, the prison could not be said to cause any interference with the

196 AIR 1980 SC 1579
198 AIR 1974 SC 2092: (1975) 3 SCC 185
personal liberty of the prisoners. Similarly, a prisoner could not complain of the installation of a high-voltage live-wire mechanism on the jail walls to prevent escape of prisoners. A convict has no fundamental right to escape from the prison. The mechanism is only a preventive measure intended to act as a deterrent to those who try to escape and a convict is likely to come in contact with it only when he attempts to escape from the prison.

In State of Maharashtra Vs. Prabhakar Pandurang\textsuperscript{199}, it has been held that a convict should not be wholly deprived of his fundamental rights and his conviction does not reduce him to a non-person whose rights are subject to the whims of prison administration. Therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards.

In this context it may, therefore, be stated that the Supreme Court, while interpreting Article 21, has laid down a new constitutional and prison jurisprudence.

The Supreme Court issued directions to the jail authorities, in Sunil Batra Vs. Delhi Administration\textsuperscript{200} to stop all indignities, which the prisoners were subjected to. In the instant case, Sunil Batra wrote a letter to a Judge of the Supreme Court highlighting the inhuman treatment being meted out to the inmates of Tihar Jail. The court treated the letter as a writ petition and issued directions to the jail authorities to stop all kinds of inhuman treatment being meted out to the prisoners. The court also took cognizance of the callousness of the jail authorities in protecting the prisoner’s interests.

\textbf{Right against Solitary Confinement i.e. Right to Socialize}

The Supreme Court has also sought to humanize prison administration. It has emphasized that Articles 14, 19, 21 are available to prisoners as

\textsuperscript{199} AIR 1966 SC 424
\textsuperscript{200} AIR 1978 SC 1675
well as free men. Prison walls do not keep out fundamental rights\textsuperscript{201} available otherwise.

In Sunil Batra vs Delhi Administration\textsuperscript{202} the Supreme Court held the imposition of solitary confinement on the petitioner as violative of Article 21 of the Constitution. Explaining the scope of personal liberty in Article 21 in reference to Section 30 (2) of the Prison Act, 1894\textsuperscript{203} the court made it clear that prisoner during the pendency of his appeal before a court could not be subjected to solitary confinement by jail authorities. He is still entitled to the right to move, mix, mingle, talk, share the company of co-prisoners. Further, the Court held that, “Solitary confinement could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from other prisoners\textsuperscript{204}.”

In Frances Coralie vs Union Territory of Delhi\textsuperscript{205} the expression "personal liberty" in Article 21 has been held to include the right to socialize with the members of family and friends subject, of course, to any valid prison regulations, and under Article 14 and 21. Such prison regulation must be reasonable and not arbitrary.

\textsuperscript{201} T.V. Vatheeswaran vs. State of Tamil Nadu AIR 1983 SC 361 It has given several directions regarding the treatment of prisoners and improvement of several aspects of prison administration for example regarding handcuffing of prisoners, putting bar fetters and solitary confinement etc.

\textsuperscript{202} AIR 1978 SC 1675 the petitioner Sunil Batra was sentenced to death by the Delhi Sessions Court and his appeal against the decision was pending before the High Court. He complained that since the date of his conviction by the Session’s Court he was kept in solitary confinement. Batra contended that Section 30 of the Prisons Act, 1894 did not authorize the jail authorities to impose the punishment of solitary confinement, which by itself was a substantive punishment under Section 73 and Section 74 of the Indian Penal Code, 1860; and could be imposed only by a court of law. Further, he contended that imposition of solitary confinement could not be left to the whims and caprices of the prison authorities.

\textsuperscript{203} Provides for confinement of a prisoner under sentence of death in a cell apart from other prisoners

\textsuperscript{204} Ibid 1693

\textsuperscript{205} AIR 1981 SC 746
Right against Bar Fetters and Handcuffing

The Supreme Court's awakened conscience can be seen in a number of its decisions whereby it has condemned the conduct of police in handcuffing the undertrial prisoners without justification. To prevent and check the police tendency to misuse the power to handcuff an arrestee, the courts have, from time to time, laid down certain guidelines as to the use of handcuffs in or out of the prison.

For the first time, the following guidelines were issued in Sunil Batra vs. Delhi Administration\textsuperscript{206} as the Court felt that reckless handcuffing and chaining in public degrades, puts to shame the finer sensibilities and is a blur on our culture;

1. Bar fetters shall be used only when there is an acute necessity for them.
2. The officer shall record the special reasons for the same and explain why any other disciplinary alternatives were considered to be unsafe.
3. The reason shall be recorded both in the records of the superintendent and the history sheet of the prisoner and, that too, in the language of the prisoner.
4. The condition of dangerousness of the prisoner should be well grounded.
5. In great emergency, iron bars could be used without following these precedent conditions. Before using the bar fetters the principle of natural justice shall be complied with. The need to continue with the fetters shall be reviewed daily and those shall be removed at the earliest. If the fetters are needed beyond one day, a Magistrate or a Session’s judge shall take the decision in a relevant case.

In the Sunil Batra case, the apex court declared that to fetter prisoners is an unjustified and inhuman act unless the safe custody is otherwise

\textsuperscript{206} AIR 1978 SC 1675
impossible. The Court held: "To fetter a prisoner in iron is an inhumanity unjustified save where safe custody is otherwise impossible. A routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice\(^{207}\). Since then the Supreme Court has expressed its anti-handcuffing approach in series of cases.

Many a time the police authorities use handcuffs on the prisoners while bringing them to the court and taking them back to the prisons. The act of handcuffing of the prisoner is justified only if the circumstances so require. Otherwise such handcuffing of a prisoner would be violative of his fundamental right to life guaranteed under Article 21 of the Constitution which includes the right to have dignified life.

In Prem Shankar Shaukla Vs. Delhi Administration\(^{208}\), Justice Krishna Iyer observed:

"Handcuffing has been held to be prima facie inhumane and, therefore, unreasonable, overly harsh, and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict irons is to resort to zoological strategies repugnant to Article 21. It has been held to be unwarranted and violative of Article 21."

In this case for the first time, Justice Krishna Iyer and Justice O. Chinnappa Reddy have vehemently stressed that handcuffing should not be used in routine and should be used only when the person was desperate, rowdy or the one who was involved in non-bailable offences.

Justice Krishna Iyer observed that “it is implicit in Article 14 and 19 that there is no compulsive need to fetter a person’s limbs, it is sadistic, capricious, despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Articles 14 in its face. The minimal freedom of movement which even a detainee is entitled to under Article 19 cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable to do so unless the state is able to make

\(^{207}\) Ibid at 1593 in paragraph 23

\(^{208}\) AIR 1980 SC 1535
out that no other practical way of forbidding the escape is available, the prisoners being so dangerous and desperate and circumstances so hostile to safe keeping\textsuperscript{209}. Justice R.S. Pathak observed that "whether handcuffs or other restraint should be imposed on a prisoner is a matter for the decision of the authority responsible for his custody. But there is room for imposing supervisory regime over the exercise of that power. One section of supervisory jurisdiction could appropriately lie with the court trying the accused, and it would be desirable for the custodial authority to inform that court of the circumstances in which, and the justification for, imposing a restraint on the body of the accused. It should be for the court concerned to work out the modalities of the procedure requisite for the purpose of enforcing such control".\textsuperscript{210}

Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. The minions of the police establishment must make good their security lapses by getting judicial approval. And, once the court directs that handcuffs shall be off, no escorting authority can overrule judicial directions. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorizes stringent deprivation of life and liberty. The decisions in Maneka Gandhi's case\textsuperscript{211} and Sunil Batra's case\textsuperscript{212} read in proper light, lead us to this conclusion.\textsuperscript{213}

\textsuperscript{209} Ibid at 1536
\textsuperscript{210} Ibid at 1547
\textsuperscript{211} AIR 1978 SC 597
\textsuperscript{212} AIR 1978 SC 1675
\textsuperscript{213} Ibid 1543

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The rule regarding a person in transit between the prison house and the
court house is freedom from handcuffs and the exception will be
restraints with irons, to be justified before or after.

Reiterating the above ruling in Citizens for Democracy through its
President v. State of Assam214, the Court has directed that "handcuffs or
other fetters shall not be forced on a prisoner-convicted or under-trial
while lodged in a jail anywhere in the country or while transporting or
in transit from one jail to another or from jail to court and back". The
police and jail authorities, on their own, shall have no authority to direct
handcuffing of any one without the order of a Magistrate for the purpose.

In Kishore Singh v State of Rajasthan215 Justice Krishna Iyer warned that
bar fetters should be imposed only in 'rarest of rare cases' for
'convincing security reasons' and according to the principles of Natural
Justice. In Kadra Pehadiya vs. State of Bihar216 the court ordered the
immediate removal of bar fetters from the body of the petitioner and
directed the police to follow Sunil Batra's case.

In Sunil Gupta vs. State of Madhya Pradesh217, the Supreme Court
following its earlier judgments directed the subordinate courts to ensure
that handcuffs or fetters should be used in extreme circumstances. In

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214\text{AIR 1996 SC 2193}
215\text{AIR 1981 SC 625. In Kishore Singh’s case a PIL was initiated by a telegram which was considered as a petition for issuance of writ of \textit{habeus corpus} to release some of the prisoners who were kept in solitary confinement and bar fetters for more than 1 year. The Supreme Court issued directions to the Jaipur Central Jail where many prisoners were handcuffed and foot-cuffed and kept in solitary confinement. To release them forthwith, Justice Krishna Iyer observed that Article 21 of the Constitution of India is the keeper of human dignity and the police cannot use third degree methods against the prisoners. Besides no prisoner should be handcuffed or foot cuffed and put under bar-fetters except in the rarest of rare cases and that too after following the principles of natural justice. Human dignity is a dear value of our Constitution, not to be bartered away for the mere apprehensions entertained by jail authorities.}
216\text{AIR 1981 SC 939}
217\text{(1990) 3 SCC 119}
Harbans Singh vs. State of U.P.\textsuperscript{218}, the Supreme Court once again reiterated that undertrial prisoners should not be kept in fetters in jails as it is inhuman to keep them in fetters while they are awaiting trial.

The nature of accusation is not the criterion; the clear and present danger of escape, breaking out of the police control is the determinant. The only circumstance validating handcuffing is that there is no other reasonable ways of preventing his escape in the given circumstances. And for this, there must be clear material, not glib assumption, record of reasons and judicial oversight, and summary hearing and direction by the trial court where the victim is produced.

However, the police in India observe these guidelines more in breach than in observance. It became clear in the famous Nadiad Case\textsuperscript{219} when a Chief Judicial Magistrate was handcuffed and humiliated in public. This time the Supreme Court went a step ahead and laid down detailed guidelines to be followed by the State Government and the High Courts while effecting the arrest of sub-ordinate judicial officers:

a) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court, as the case may be.

b) If the facts and circumstances necessitate the immediate arrest of a judicial officer of the sub-ordinate judiciary, a technical or formal arrest may be effected.

c) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the district concerned and the Chief Justice of the High Court.

d) The Judicial officer so arrested shall not be taken to the Police Station without the prior orders or directions of the District and Sessions Judge of the district concerned, if available.

\textsuperscript{218} AIR 1991 SC 531
\textsuperscript{219} Also known as Delhi Judicial Services Association, Tis Hazari Vs. State of Gujarat AIR 1991 SC 2176
e) Immediate facilities shall be provided to the judicial officer for communication with his family members, legal advisers and judicial officers, including District & Sessions Judge.

f) No statement of a Judicial Officer who is under arrest, should be recorded nor any panchanama be drawn up nor any medical test be conducted except in the presence of his Legal Adviser or another judicial officer of equal or higher rank, if available.

g) There should be no handcuffing of the judicial officer. If, however violent resistance to arrest is offered, or there is imminent need to effect physical arrest in order to prevent danger to the life and limb of the person making the arrest, he may be overpowered and handcuffed. In such cases immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court.

In Citizens for Democracy vs State of Assam220 the Supreme Court has again made the law clear in this regard and; declared, directed and laid down as a rule that handcuffs and other fetters shall not be forced on a prisoner, convict or undertrial while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back to the police station.

The court observed that where the police or the jail authorities are satisfied that without handcuffing the prisoners or using any other fetters, it is not possible to bring them to the court, they have to seek prior permission from the magistrate to do so. Otherwise such an act of the authorities would amount to violation of Right to Life guaranteed under Article 21 of the Constitution. The constitutional mandate of Article 21 is equally applicable to the prisoners who are in jail either as convicts or as undertrial prisoners. Besides it is also observed that where any person is arrested by the police and is produced before a magistrate, if he is remanded to judicial custody by the magistrate, such person shall not be handcuffed unless special orders are obtained from the magistrate at the time of grant of remand. This restriction is equally

220 (1995) 3 SCC 743

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applicable when the police arrests a person in execution of a warrant of arrest obtained from a magistrate. From the above decisions, it is clear that even the prisoners have some constitutional rights, which cannot be denied to them either by police or by jail authorities. The mere fact that the person has became a prisoner does not mean that they should be deprived of their constitutional rights which are sacrosanct and valuable for any individual for a dignified and decent life.

In Ravi S Patel vs. State of Maharashtra\textsuperscript{221}, the apex court upheld the award of compensation by the High Court for violation of fundamental rights under Article 21, wherein an undertrial was handcuffed and taken through the streets in procession during police investigation. Thereafter in Khetdar Mazdoor Chetna Sangathan vs. State of Madhya Pradesh\textsuperscript{222}, the Court strongly condemned the handcuffing of the undertrials and convicts in a routine manner. In Citizens for Democracy vs. State of Assam\textsuperscript{223}, the court relying on Sunil Batra and Prem Shankar Shukla held that the guilty police officers are personally liable to pay the compensation. It further ordered that no bar fetters should be put on any person by any police officer of any rank except with written and specific orders of the magistrate. The court declared that any violation of these directions by the police or jail authorities should be summarily punishable under the Contempt of Courts Act, aparts from other penal consequences under the law. In M.P. Dwivedi vs. State\textsuperscript{224} the court took suo moto contempt action and condemned police personnel and magistrates for tolerating the use of iron fetters without valid justification.

**Free Legal Aid**

Article 39A, a directive principle, obligates the State to secure that the operation of the legal system promotes justice, on the basis of equal

\textsuperscript{221} (1991) 2 SCC 373  
\textsuperscript{222} (1994) 6 SCC 260  
\textsuperscript{223} (1995) 3 SCC 742  
\textsuperscript{224} (1996) 4 SCC 152
opportunity, and shall, in particular, provide free legal aid\textsuperscript{225}, by suitable legislation or schemes or any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 39A stresses legal justice. Put simply, the directive principle requires the State to provide free legal aid to deserving persons so that justice is not denied to anyone merely because of economic disability.

The Supreme Court has emphasized, interpreting Article 21 in the light of Article 39A, that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39A but also by Articles 14 and 21. In the absence of legal assistance, injustice may result. Every act of injustice corrodes the foundations of democracy\textsuperscript{226}. Article 39A makes it clear that the social objective of equal justice and free legal aid has to be implemented by suitable legislation or by formulating schemes for free legal aid.\textsuperscript{227} Although the mandate in Article 39A is addressed to the legislature and the executive, as the courts can

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\textsuperscript{225} The central Government in May, 1976, appointed a high powered committee (to consider the question of legal aid) consisting of Mr. Justice Bhagwati as Chairman and Mr. Justice Krishna Iyer as member which submitted its report in August, 77. This was a happy blend of two previous reports i.e. Bhagwati report (Gujrat 1971) and Krishna Iyer report (Expert Committee report 1973). In their forwarding letter to the Prime Minister, the committee emphasised that the juridicare project was of vital importance to the success of our democratic experiment and "if we want to invest the rule of law with life and meaning, a dynamic and activist legal services programme is absolutely imperative". This report was an effort to bring a ray of hope in the hearts of the hungry half naked millions of India. The committee drew the special attention of the Prime Minister to the chapters on Nyaya panchayats and Lok Nyayalyas, 'conciliation' not litigation', and legal services to the Weaker sections, which the committee wanted to be included as plan items.

The committee envisaged free legal services for the weaker sections-economically and otherwise. It suggested special provisions of legal aid for families of jawans, for labour, women and children, religious, linguistic and other minorities and special treatment of legal problems peculiar to backward areas and geographically remote regions. The committee opined that voluntary professional and social welfare agencies and voluntary wings of Bar should be mobilised and law schools be encouraged to make the juridicare programme a success. The cost of free legal services should be borne by the state as a part of good government.

\textsuperscript{226} Sheela Barse vs state of Maharastra, AIR 1983, SC 378

\textsuperscript{227} Ranjan Dwivedi v Union of India AIR 1983 SC 224.
indulge in some 'judicial law-making within the interstices of the Constitution or any statute before them for construction', the courts too are bound by this mandate.

An innovative step in the scheme of Administration of Justice taken by the court has been to insist on free legal aid to poor prisoners facing a prison sentence. This is a giant step in humanizing of the administration of criminal justice. The Supreme Court has emphasized that the lawyers’ services constitute an ingredient of fair procedure to a prisoner who is seeking relief through the courts’ procedure. Thus the state should provide free legal aid to a prisoner who is seeking his liberation through the courts’ procedure. 228

In M.H. Hoskot vs. State of Maharashtra229 the Supreme Court has held that the State should provide free legal aid to the prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service.

The Supreme Court further held that providing legal aid is the duty of the state and no longer can it be said to be the charity of the government.

In Hussain ara Khatoon Vs. State of Bihar230 the Court observed;

It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the Courts process that he should have legal services available to him.

Further Bhagwati J. observed:–
Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would

228 M.P. Jain’s the Supreme Court and the Fundamental Rights. The Fifty Years of SC of India, its Grasp and Reach p 27
229 AIR 1978 SC 1548
230 AIR 1979 SC 1360

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therefore, have to go through the trial without legal assistance cannot possibly be regarded as ‘reasonable, fair and just.\textsuperscript{231}

Again in the case of Khatri (II) vs. Home Secretary State of Bihar\textsuperscript{232} further clarified that the state cannot escape its constitutional obligation of providing free legal services to indigent accused persons by pleading financial or administrative inability. According to the Supreme Court, the state is under a constitutional mandate and whatever is necessary for this purpose of providing legal aid has to be done by the state.

In this Case Supreme Court also held that the constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences, but also when the accused is for the first time produced before the Magistrate because it is at that stage that accused gets the first opportunity to apply for bail as also to resist remand to police or jail custody.\textsuperscript{233}

But this right to free legal aid may prove to be illusory unless the magistrate or the court before whom or before which the accused is produced, informs the accused of this right. Therefore the Supreme Court declared “We would, therefore, direct the magistrates and session judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the state.”\textsuperscript{234}

Ranjan Dwivedi vs. Union of India\textsuperscript{235} is a landmark judgment on the right to legal aid as the Supreme court held that Article39-A may be used as aid in the

\begin{footnotesize}
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\item \textsuperscript{231} Ibid at 1373
\item \textsuperscript{232} AIR, 1981, SC 931
\item \textsuperscript{233} Ibid 931-32
\item \textsuperscript{234} Ibid 931-32
\item \textsuperscript{235} AIR 1983 SC 624 in this case the court took a significant step to make free legal aid effective and not merely formal. Under the rules of the Delhi High Court, at that time a daily fee of Rs 24 a day was payable to a lawyer appearing as amicus curiae. Ranjan argued that for such a paltry fee, no lawyer of standing would appear. The prosecution was being conducted by senior lawyers and so Ranjan argued that as a matter of procedural fair play, the State should provide him with a counsel on the
\end{itemize}
\end{footnotesize}
interpretation of Article 21. It requires the state to provide social and economic justice to the poor through comprehensive schemes of legal aid. The accused is entitled to legal aid from the moment he is first produced before a magistrate to the end of the trial. In Suk Das vs. State of Arunachal Pradesh\textsuperscript{236}, the Supreme Court gave a final shape to the right to free legal aid in criminal case. The Supreme Court ruled that the failure of criminal court to provide free legal aid to indigent accused at criminal trial would entitle him to acquittal and such a failure was clear violation of fundamental right of the accused under Article 21 of the constitution.

This right has been further broadened to the time of making arrest in D.K Basu vs. State of West Bengal\textsuperscript{237}. The Court further observed that the counsel provided should not be an inexperienced junior but should be a person having sufficient experience. He should be paid remuneration fixed by the court on equitable basis. The State must provide reasonable facilities to such counsel for conducting the case in a fair and reasonable manner. To make the legal aid scheme more effective, the apex Court in Centre for Legal Research vs. State of Kerala\textsuperscript{238} called for people’s participation in the legal aid movement.

Thus, through this case Supreme Court has imposed a check upon the usual excuse of the lower court that accused did not ask for legal aid and made it an obligation of the judge to inquire the indigent accused basis of equal opportunity. The Supreme Court, accordingly, quantified the fee payable at Rs 500 a day to the senior counsel and Rs 350 per day for junior counsel for representing the petitioner. However, the provision for free legal aid is subject to the following rider:

The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal aid. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the state.

\textsuperscript{236} AIR 1986 SC 991
\textsuperscript{237} AIR 1997 SC 610
\textsuperscript{238} AIR 1988 SC 2195
and provide him the legal Service unless he refused to accept. This case has bound the state to provide legal aid despite their financial constraint.

For affecting arrest of a person, the Supreme Court issued the following directions:239

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags, along with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a Police Station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable that he has been arrested and is being detained at a particular place unless the attesting witness is some friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the district and the Police Station of the area concerned telegraphically within a period of 8 to 12 hours of the arrest.

239 D.K. Basu vs. State of West Bengal AIR 1997 SC 611, 623 para-36
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in a diary at the place of detention regarding the arrest of the person, which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of police official in whose custody the arrestee is.

7. The arrestee should be, where he so requests, also examined at the time of his arrest of the major and minor injuries, if any present on his/her body and the same must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy be provided to the arrestee.

8. The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor, who is on the panel of doctors approved by the Director, Health Services of the State or Union Territory concerned. The Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9. Copies of all the documents including the memo of arrest referred to above should be sent to the Illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout interrogation.

11. A Police Control room should be provided at all districts and State Headquarters, where information regarding the arrest and the place of custody, of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the Police Control room, it should be displayed on a conspicuous Notice Board.

Failure to comply with the requirements herein above—mentioned shall, apart from rendering the official concerned liable for departmental
action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High court of the country having territorial jurisdiction over the matter.\textsuperscript{240}

The Court further held that these instructions are also applicable to authorities like Directorate of Revenue Intelligence, Directorate of Enforcement, C.B.I. C.I.D., C.I.S.F., R.A.W., Traffic Police, Mounted Police, I.T.B.P. who have the power to effect arrest and detain person for interrogation.\textsuperscript{241}

To create public awareness, the court opined that the said requirements be broadcast on All India Radio and shown on National Network of Doordarshan, by publishing and distributing pamphlets, in local languages, containing these requirement for the information of the general public.\textsuperscript{242}

g) **Right against custodial violence**

"Custodial Violence" and abuse of police power is not only peculiar to this country but it is wide-spread. It has been the concern of international community because the problem is universal and the challenge is almost global\textsuperscript{243}

The Universal Declaration of Human Right, 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."\textsuperscript{244}

\textsuperscript{240} Ibid 623 624 para -37
\textsuperscript{241} Ibid, p 611 para 38
\textsuperscript{242} Ibid 624, para 40
\textsuperscript{243} Ibid, at p 616
\textsuperscript{244} Article 5 of universal Declaration of Human Rights.
The Law commission in its 113 report\textsuperscript{245}, and the third report of the National Police Commission in India expressed its deep concern with custodial violence and lock up deaths.

"Custodial Torture is a naked violation of human dignity and degradation which destroys to a large extent, the individual personality. It is a calculated assault on human dignity"\textsuperscript{246}

Custodial death Perhaps one of the worst crimes in a civilized society governed by the Rule of Law...... any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21, whether it occurred during investigation, interrogation or otherwise.\textsuperscript{247}

The issue of custodial violence came before the Supreme Court in the case of Sheela Barse vs. State of Maharashtra\textsuperscript{248}. In this case a writ petition came up before the Supreme Court on the complaint of custodial violence against women in a police lock up. The Supreme Court took a serious note of violence committed on a woman prisoner while in a police lock up and laid down certain guidelines for ensuring protection against torture and maltreatment of women in police lock up.

1. 4 to 5 Police lock-ups, in a reasonably good locality, should be selected where only female suspects should be kept and should be guarded by female constables.

\textsuperscript{245} The Law Commission in its 113\textsuperscript{th} Report recommended the insertion of Section 114B in the Indian Evidence Act. The Law Commission recommended in its 113\textsuperscript{th} Report that in prosecution of a police officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of that person during that period. The Commission further recommended that the Court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody, statement made by the victim, medical evidence and the evidence which the Magistrate may have recorded. Change of burden of proof was, thus advocated.

\textsuperscript{246} D.K. Basu vs State of West Bengal AIR 1997 SC 615

\textsuperscript{247} Ibid 610

\textsuperscript{248} AIR 1983 SC 378
2. Interrogation of females should be carried out only in the presence of female police officers/constables.

3. One of the judges, preferably a lady judge, if there is one, shall make a surprise visit to the police lock-ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and to ascertain the prevailing conditions in the lock up as also whether the provisions of laws are being observed and directions given by this court are followed and if any lapse is found as a result of such inspection, the authorities be informed about it.

h) **Compensation in Cases of Custodial Violence**

The court is not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a Fundamental Right, impose a constitutional obligation on the courts to forge new tools which may be necessary for doing complete justice and enforcing the Fundamental Right guaranteed in the Constitution, which enables the award of monetary compensation in appropriate cases.

The Supreme Court has, in number of cases, awarded compensation in cases involving custodial death.

In Saheli vs. Commissioner of police\(^\text{249}\)

The Supreme Court made it quite clear that the state is liable for the torturous acts committed by its agencies. It was a writ petition filed under Article 32 of the Constitution by a women’s civil rights organization known as SAHELI on behalf of the deceased’s mother for recovery of compensation consequent to the death of her child (9 years) caused in the custody (Anand Prabhat Police Station, Delhi). The Court while holding the state liable for such torturous acts of its agencies awarded a compensation of Rs. 75,000 to the mother.

In the case of Nilbati Behera vs. State of Orissa\(^\text{250}\) relating to a case of custodial death, the Supreme Court once again reiterated that in case of

\(^{249}\) (1990) 1 SCC 422

\(^{250}\) (1993) 2 SCC 746 at 763-764
violation of fundamental rights by the state instrumentalities or its servants, a court can direct the state to pay compensation to the victim or its heir by way of 'monetary amends' and redressal. The court has clarified that police law proceedings are different from private law proceedings and the award of compensation in proceedings for the enforcement of fundamental rights under Article 32 and 226 of the constitution is a remedy available in public law.

In Ajaib Singh vs. U.P., the Supreme Court has awarded a compensation of Rs. 5 lakh, to be paid within 3 months to the children of the person who had died in custody because of shock and hemorrhage due to ante-mortem injuries. The court, while awarding compensation, made it clear that "the directions to pay compensation shall be without prejudice to the right of the legal representatives of the deceased to claim compensation in private law proceedings"

In February 2008, the Punjab and Haryana High Court created a unique precedent in awarding a compensation of Rs 10 lakh to the family of an undertrial murdered in the Ferozepur jail. It also fixed accountability on the head warden, a warden and a havildar. Not surprisingly, the jail officials tried to hush up the death, claiming that the undertrial succumbed to the injuries he had received while trying to escape from the jail. However, an inquiry ordered by Justice Surya Kant revealed that he died following torture by the jail staff. It has also found the DSP (Jails) responsible for the custodial death and directed the DGP to take action against him.

Very recently, the Delhi High Court awarded a compensation of Rs 5 lakh, along with interest of over Rs 2 lakh to the widow of a Haryana Government employee who died in Delhi Police custody eight years ago. A Division Bench asked the government to disburse the same within six weeks as the deceased was the sole bread-earner of the family. The victim, who was picked up by a Delhi Police team in August 1999, died of grievous physical assault in custody.

AIR 2000 SC (Supp) 3421


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i) **The Right to Speedy Trial**

The right to speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Ample provisions have been made in this regard in the Code of Criminal Procedure and the Police Act for expeditious disposal of matters at various stages\(^{253}\).

Although the problem of delay in disposal of cases is not a recent phenomenon, of late it has assumed gigantic proportions. A large number of committees and commissions have been set up to look into the matter\(^{254}\) but no appreciable change is visible. The various reasons for delay are:-

(i) Absence of witness (ii) Absence of counsel (iii) Adjournments (iv) Crowded lists (v) Failure to examine witnesses though present (vi) Absence of a system of day to day hearing and (vii) Delay in the delivery of judgments

The right to speedy trial has been universally recognized as a human right. Originally the Indian Constitution did not guarantee this right. However, since 1978, there has been a sea change in the judicial interpretation of constitutional provisions. The right to speedy trial received the status of a fundamental right due to the creative judicial interpretation of Article 21. Quick Justice is now regarded as sine-quo-non of Article 21\(^{255}\)

It is one of the offshoots of the doctrine of fair, just and reasonable procedure as laid down in Maneka Gandhi’s case\(^{256}\). In case of Hussaniara khatoon (1) Vs Home secretary state of Bihar\(^{257}\), Justice P.N. Bhagwati observed that though the right was not specially guaranteed by the founding fathers of the Constitution, it

\(^{253}\) Sec 157, 167,173, 309 of Code of Criminal Procedure and the committal proceeding with respect to Sessions judge; also the rules framed under SS 7, 12 of the police Act. 1861.

\(^{254}\) 14\(^{th}\), 77\(^{th}\) and 78\(^{th}\) reports of Law Commission of India.

\(^{255}\) M.P. Jain; Indian Constitutional law (2006) p 1096

\(^{256}\) Maneka Gandhi Vs Union of India AIR 1978 SC 597.

\(^{257}\) (1980) 1, SCC 81
was implicit in the broad sweep and content of Article 21. He further said that mere semblance of procedure was not enough and speedier trial meant reasonably expeditious trial. Moreover, J. Bhagwati emphasizing the right as an essential ingredient of Article 21 said that right cannot be denied on the ground of financial or administrative inability of the state.\textsuperscript{258}

He said that the state is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the state. It is also a constitutional obligation of the supreme Court as guardian of the fundamental rights of the people, as sentinel on the qui-vive to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the state, which will include taking positive actions such as augmenting and strengthening the investigation machinery, setting up new courts, appointing additional judges and other measures calculated to ensure speedy trial. The court also observed that a procedure which keeps large number of person behind bar without conducting any trial for long period is unjust and unfair and not in conformity with the mandate of Article 21 of the Constitution.

The court referred to the VI\textsuperscript{th} amendment to the United States Constitution 1791 which provides. “In all criminal prosecution the accused shall enjoy the right to speedy and public trial”. It is thus a constitutionally guaranteed right in the United States. Article 3 of the European Convention on Human Rights provides that “Every one arrested or detained shall be entitled to trial within a reasonable time or release pending trial”.\textsuperscript{259}

\textsuperscript{258} Ibid at p 98: Kadra Pahadiya (II) Vs state of Bihar AIR 1982 Sc 1167 where in court re-emphasised that right to speedy trial was a fundamental right and the aggrieved person may approach the court for necessary directions to be State Government and other appropriate authorities for enforcement of the person’s right. The right was re-affirmed in Sheela Barse Vs Union of India, (1986) 3 SCC 632. Abdul Rehman Antulay Vs R.S. Nayak (1992) 1 SCC 225 wherein the right was re-emphasised when the Court said “fair, just and reasonable procedure implicit in Article 21 of the Constitution create a right in the favour of the accused to be tried speedily.”

\textsuperscript{259} at p 84
In Hussainara Khatoon (II) vs Home Secretary Bihar260 the Supreme Court has reiterated the need for the expeditious review for withdrawal of cases against under trials which were pending for more than 2 years.

Again, the Supreme Court was dissatisfied with the compliance of its earlier direction, ordered the release of all those undertrials held for a period more than the maximum term on conviction as continuations of such detention was held to be clearly illegal and violative of Fundamental Right under Article 21 of the Constitution.

Since Hussainara's case, large number of cases involving the accused charged with serious and non-serious offences, mentally retarded persons and others have come up before the Court and it has been held that all persons awaiting trial for long can approach the Supreme Court, which will give necessary directions in the matter. In several cases the Court has given such directions.

In A.R. Antulay vs. R.S. Naik261 the constitution bench of five learned judges of the Supreme Court dealt with the question of the right to speedy trial and laid down certain guidelines without seeking to be exhaustive which may be summarised as follows:

1. Fair, just and reasonable procedure implicit in Article 21 created a right in the accused to be tried speedily.
2. Right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial.
3. The concerns underlying the right to speedy trial from the viewpoint of the accused are

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260 (1980) 1 SCC 98
261 AIR 1992 SC 1701 at 1730 – 1732; Raj Deo Sharma vs state of Bihar (1) AIR 1998 SC 3281; Raj Deo Sharma (ii); (1999) 7 SCC 604 wherein court clarified the implications of some of the directions issued by in Raj Deo (1)
(a) the period of remand and pre-conviction detention should be as short as possible i.e. the accused should not be subjected to unnecessary or long incarceration prior to conviction.

(b) the wrong, anxiety, expense and disturbance to his vocation and peace resulting from unduly prolonged investigation, inquiry or trial should be minimum.

(c) Undue delay may well result in impairment of ability of the accused to defend himself whether on account of death, disappearance or non availability of witnesses or otherwise.

(3) Where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is: Who is responsible for the delay? The proceedings undertaken by either party in good faith to vindicate their right and interest and perceived by them cannot be treated as delaying tactics nor can the time taken in pursuing the proceedings be counted towards delay.

(5) While determining whether undue delay has occurred, one must have regards to all the attendant circumstances including the nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on, what is called the systemic delays. In such matters, a realistic and practical approach instead of a pedantic one should be adopted by the state including the judiciary.

(6) Each and every delay does not necessarily prejudice the accused some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. The prosecution should not be allowed to become persecution but when does the prosecution become persecution again depends upon the facts of a given case.

(7) The Court has refused to accept the 'demand' rule. An accused person's plea of denial of speedy trial cannot be defeated by saying that the accused did not demand a speedy trial. Even in the USA, the relevance
of the demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately the court has to balance and weigh the several relevant factors – balancing test – or balancing process – and whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the Court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction as the case may be, shall be quashed. In a given case, however, the court may make such other appropriate order if the quashing of proceedings is not in the interest of justice.

(10) It is neither advisable nor practicable to fix any time limit for trial of offences. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay.

(11) An objection based on denial of right to speedy trial and for relief on that account should first be addressed to the High Court. Even if the High Court entertains such a plea ordinarily, it should not stay the proceedings except in case of grave and exceptional nature. Such proceeding in the High Court must, however, be disposed off on a priority basis.

Again, in the Common Cause case\(^{262}\), the Supreme Court took a positive approach by passing orders for the release of under-trial prisoner if the trial of the case for an offence, which is punishable with imprisonment upto three years, has been pending for more then two years and the trial has not commenced.

In Moti Lal Saraf vs. State of Jammu & Kashmir\(^{263}\) the commencement and continuance of right to speedy trial enshrined under Article 21 of the constitution was considered. According to the court right to speedy trial

\(^{262}\) Common Cause A Registered Society vs Union of India AIR 1996 SC 1619

\(^{263}\) AIR 2007 SC 56
begins with actual restraint imposed by arrest and consequent incarceration. It continues at all the stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of commission of offence till it consummates into a finality, can be averted.

On the basis of the above decisions, one can conclude that there is a consistent assertion that speedy trial means reasonably quick trial. Then the question arises whether a delayed trial is an unfair trial? This question has an answer in a decision rendered by the Supreme Court in the case of Champak Lal vs State of Maharashtra264 In this case, the right to speedy trial was put forward as a defence to secure the release of the accused. Laying down the prejudice test, the Court ruled that though a fair trial implied speedy trial, a delayed trial was not necessarily an unfair trial. The refined approach adopted by Justice O. Chinnappa Reddy made a distinction between the delay caused by the accused himself and delay caused by the prosecuting agencies. The delay caused by the accused did not prejudice him. Hence the quashing of the conviction on the grounds of delay would depend upon facts and circumstances of the case. In this case since the accused himself was responsible for a fair part of the delay, the appeal was not allowed on this ground.

The Court also made it clear that the right cannot be denied on the ground that no demand for the right was made. If such a demand is made, it is a plus point in his favour.265 The Court further held

“While determining whether undue delay has occurred (resulting in violation of speedy trial), one must have regard to all the attendant circumstances including the nature of offence, the number of accused

264 AIR 1981 SC 1675
265 A.R Antulay Vs R.S. Nayak (1992)1 SCC 225
LONG PRE-TRIAL CONFINEMENT

A very grievous aspect of the present-day administration of criminal justice is the long pre-trial incarceration of the accused persons. The poor persons have to languish in prisons awaiting trial because there is no one to post bail for them. This perpetrates great injustice on the accused person and jeopardizes his personal liberty. Thousands of accused persons languish in jails awaiting trial for their offences. Sometimes an under-trial may remain in prison for much longer than even the maximum prison sentence which can be awarded to him on conviction for the offence of which he is accused.

This adversely affects the rights of the under-trials who are presumed to be innocent till proven guilty. This also leads to overcrowding in prisons. One reason for this state of affairs is the irrational law regarding bail which insists on financial security from the accused and their sureties and, thus, the poor and indigent persons can not be released on bail as they are unable to provide financial security. Consequently, they have to remain in prison awaiting their trial. Thus, even persons accused of bailable offences are unable to secure bail.

The Supreme Court has criticized long incarceration of under-trials, and has sought to rectify the deplorable situation. Commenting on the deplorable situation, the court has observed:

“It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial....”

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266 Ibid, p 227
267 The law commission has in its 77th and 78th reported on this matter. It has said that the matter of reducing delay and arrears in trial courts is of the “greatest importance” to which “the highest priority” ought to be given.

On 1-4 1977, there was over 1 lakh undertrials languishing in jails. The commission has called the problem as appalling.
The court has declared that after the ‘dynamic’ interpretation of Article 21 in Maneka Gandhi, there is little doubt that any procedure which keeps such large number of people behind bars without trials so long can not possibly be regarded as “reasonable, just and fair” so as to be in conformity with Article 21. It is necessary that the law enacted by the legislature and as administered by the court must radically change its approach to pre-trial detention and ensure ‘reasonable, just and fair’ procedure which has creative connotations after Maneka Gandhi’s cases.\textsuperscript{268} The court has ordered release of many such under-trials as have remained in prison longer than even the maximum punishment which could have been imposed on them for their offence under the law.

**Delays in Execution of Death Penalty**

The 77\textsuperscript{th} Law Commission (1978) made the following observations w.r.t. inordinate delays in death penalty cases:

“Cases in which there is a possibility of death sentence should receive priority over all other cases. The agony of the accused in these cases is entranced by the uncertainty of the fate which awaits them. It is eventual that the sword of Damocles should not hang over them beyond the present, which is absolutely necessary.”\textsuperscript{269}

The issue of inordinate delays in death penalty cases became the subject matter of controversy as the Courts gave conflicting judgments in different cases. In the case of TV Vatheeswaran Vs State of Tamil Nadu\textsuperscript{270} the court held that if there is a delay of more than 2 years in the execution of the death sentence, that death sentence would be reduced to life imprisonment as the right to speedy trial was implicit in Article 21. However, the decision was over ruled in Sher Singh’s case\textsuperscript{271}

In Sher Singh’s case, the Court held that several factors were taken into consideration while commuting the death penalty to life imprisonment and the time limit of 2 years for the purpose was not in accordance with

\textsuperscript{268} Hussainara Khatoon vs. state of Bihar, AIR 1979 SC 1360; (1980) 1 SCC 93  
\textsuperscript{269} At p 45  
\textsuperscript{270} AIR 1983 SC 465  
\textsuperscript{271} Sher Singh Vs State of Punjab AIR 1983 SC 231
common experience. The court must find out the reason for delays. The position hardened in Sher Singh’s case was further confused by the decision of the Court in Javed Ahmed Vs State of Maharastra\textsuperscript{272}. Eventually the controversy was set at rest in the case of Treveni Ben Vs State of Gujarat\textsuperscript{273}, which rejected Vatheeswaran case and held it may considered the questions of inordinate delay in the light of all the circumstances of the case to decide whether the execution of the sentence should be carried out or should be altered into imprisonment of life.\textquotedblright In calculating delay time taken in disposal of mercy petition is also taken into account. Again, two years delay in the disposal has been found to be enough to convert death sentence into life imprisonment.\textsuperscript{274}

4.11 THE HUMAN RIGHTS OF THE MENTALLY SICK PERSONS:

The Supreme Court of India has also shown a concern for mentally sick persons and has given direction for the Protection of Human rights of Mentally Sick persons. In Miss Veena Sethi vs State of Bihar\textsuperscript{275} the Free Legal Aid Committee, Hazari Bagh, Bihar addressed a letter to a Judge of the Supreme Court, driving the court’s attention to unjustified and illegal detention of certain prisoners in Hazari Bagh Central Jail for almost two or three decades. Treating this letter as Public Interest Litigation, the Supreme Court issued notices to the State of Bihar for the purpose of ascertaining the facts in regard to these prisoners. The state filed a counter affidavit furnishing detailed particulars in regard to 16 prisoners in that jail who were of unsound mind, when they were received in the jail and who, barring two, were still rotting in the jail.

The Supreme Court ordered the release of those prisoners, who on psychiatric examination, showed sanity or had regained soundness of

\textsuperscript{272} AIR 1985 SC 231 – wherein Justice O Chinnappa Reddy, speaking for the bench held that an overall view of all the circumstances justified the commutation of death penalty to life imprisonment. The case involved a delay of two years and nine months only.

\textsuperscript{273} AIR 1989 SC 1335

\textsuperscript{274} Daya singh vs Union of India AIR 1991 SC 1548

\textsuperscript{275} AIR 1983 SC 339
mind. But those who still continue to be of unsound mind, could not be released due to social as well as personal interest.

The Supreme Court also observed that there must be an adequate number of institutions for looking after the mentally sick prisoners and that the practice of sending of lunatics or persons of unsound mind to jail for safe custody is not at all a healthy or desirable practice because a jail is hardly a place for treating those who are mentally sick.

4.12 RIGHTS TO HEALTH AND MEDICAL AID

In Parmanand Katara vs. Union of India276 the supreme court held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities to be completed in order to avoid negligent death. The petitioner, a human right activist, had brought the matter to the notice of the court. The petitioner, through a writ petition referred to a report entitled “Law Helps the Injured to die” published in The Hindustan Times. In the said publication, it was alleged that a scooterist was knocked down by a speeding car. Seeing him profusely bleeding, a bystander on the road, picked up the injured and took him to a nearby hospital. The doctor refused to attend and asked him to take him to a named hospital located some 20 km away, authorized to handle medico-legal cases. The man carried the victim to that hospital but before he could reach there, the victim succumbed to injuries. The court held that it is the obligation of those who are in-charge of the health of the community to preserve the life of the injured as laws do not contemplate death by negligence. The Court directed that the decision of the court must be published in all legal journals and adequate publicity should be given by the national media as also through the Doordarshan and All India Radio. This decision would, if followed sincerely, save many injured (either in accidents or rivalry) citizens who die because of delay in getting medical aid which could not be given to them without going through certain legal formalities by the police.

276 AIR 1989 SC 2039
In Paschim Bang Khet Mazdoor Samiti vs. State of West Bengal\textsuperscript{277} following Parmanand Katara’s ruling, the Supreme Court has held that the denial of medical aid by the government hospitals to an injured person on the ground of non-availability of beds amounted to a violation of the Right to Life under Article 21 of the Constitution. In this case, the petitioner Hakim Singh who was a member of an organisation of farm labourers had fallen from a running train and suffered from severe hemorrhage. He was taken to various government hospitals in the city of Calcutta but because of non-availability of bed, he was not admitted. Ultimately he was admitted in a private hospital and incurred an expenditure of Rs. 17000. The Court, in this case, imposed an obligation on the state to provide medical assistance to every injured person.

Preservation of human life is of paramount importance. Failure on the parts of hospitals to provide timely medical treatment to a person in need of such treatment results in violation of his Right to Life guaranteed under Article 21 of the Constitution. The court directed the government to pay Rs 25000 to the petitioner as compensation.

In a historic judgement in Consumer Education and Research Centre vs. Union of India\textsuperscript{278}, the Supreme Court held that right to health and medical aid is a fundamental right under Article 21 of the Constitution as it is essential for making the life of workmen meaningful and purposeful along with dignity of the person. Right to life under Article 21 does not connote a mere animal existence. It has a much wider meaning, which incorporates the right to livelihood, better standard of life, hygienic conditions at workplace and leisure.

4.13 **BAN ON SMOKING IN PUBLIC PLACES:**

In a significant judgment Murli S. Deora vs. U.O.I.\textsuperscript{279}, the Supreme Court has directed all states and union territories to immediately issue orders banning smoking in public places and public transport including railways.

\textsuperscript{277} (1996) 4 SCC 37  
\textsuperscript{278} (1995) 3 SCC 42  
\textsuperscript{279} AIR 2002 SC 40
Hearing a Public Interest Litigation against smoking, the court also asked the commissioner of police of Delhi, Mumbai, Chennai, Kolkata, Banglore and Ahmedabad to submit states’ reports of action taken against cigarette manufacturers’ who were violating the advertising code. The order banning smoking in public places would include hospitals, health institutes, public offices, public transport including railways, court buildings, educational institutions and libraries. Seeing the ill effects of smoking, the Court ruling would go a long way towards preventing many tobacco-related illnesses and, thereby, boost public health. The Supreme Court has held that there is no reason to compel the non-smokers to become helpless victims of air pollution.

4.14 SEXUAL HARASSMENT OF WOMEN AT WORK PLACE

The plight of women has been a matter of deep concern for the Indian judiciary. In a number of cases, the judiciary has come to the aid of women to improve their lot. Because the Indian society is male dominated, it is often seen that working women have to silently undergo sexual harassment. In Vishakha and others v State of Rajasthan & Others, the Supreme Court of India has held that sexual harassment of women at the workplace is tantamount to violation of right to gender equality and the right to life and liberty. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution.

The Court further held that: "The fundamental right to carry on any occupation, trade or profession depends upon the availability of safe working conditions. The right to life includes the means to live with dignity. The primary responsibility for ensuring such safety and dignity

AIR 1997 SC 3011 in this case, the writ petition was filed by the social activists and NGO's with a view to evolving a suitable method for realisation of the true concept of gender equality; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation. The immediate cause for the filing of this writ petition is the incidence of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it by us is necessary. The incident reveals the hazards to which working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures.
through suitable legislation and the creation of mechanism for its enforcement is the responsibility of the legislature and executive. “When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Article 14, 19,21 are brought before the court for redressal under Article 32 of the Constitution, effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vaccum”

In this case, the Supreme Court of India formulated effective measures to check the evil of sexual harassment of working women at all workplaces. Unwelcome sexually harassing behaviour was defined to include physical contact and advances, demand or request for sexual favours, sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or nonverbal conduct of a sexual nature. The Supreme Court also held that it shall be the responsibility of employers or persons in charge of workplaces, whether in the public or private sector, to take appropriate steps to prevent such sexual harassment at the workplace.

The Supreme Court, in the absence of an enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines.

1) All employers/ persons incharge of workplace whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of his obligation, he should take the following preventives steps:

a) Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks showing pornographic or any other

\[\text{ibid 3013}\]
\[\text{AIR 1997 SC 3016}\]
unwelcome physical, verbal or nonverbal conduct of sexual nature should be noticed, published and circulated in an appropriate way.

b) The rules or regulations of government or public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

c) As regards private employers, steps should be taken to include the aforesaid prohibition in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at the workplace and no women should have reasonable grounds to believe that she is at a disadvantageous position in connection with her employment.

2) Where such conduct amounts to specific offences under Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

3) The victim of sexual harassment should have the option to seek transfer of the perpetrator or his or her own transfer.

4) Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer’s organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

5) Complaints Committee: The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee, a special
counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

6) Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

7. The Central / State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in the private sector.

8. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

This decision of the court will go a long way in enhancing the sense of security in the mind of working women that their honour and dignity will be safe at their place of work

The court has reiterated the Vishaka’s ruling in Apparel Export Promotion Co vs A. K. Chopra283

283 AIR 1999 SC 625
The Supreme Court held: There is no gainsaying that each incident of sexual harassment at the workplace, results in violation of fundamental rights to gender equality and the right to life and liberty, the two most precious fundamental rights guaranteed by the Constitution of India. In our opinion, the contents of fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facts of gender equality, including prevention of sexual harassment and abuse. The Courts are under constitutional obligation to protect and preserve those fundamental rights. The sexual harassment of a female at the workplace is incompatible with the dignity and honour of women and needs to be eliminated. All such behaviour needs to be eliminated and that there can be no compromise with such violations. Articles 14, 15 and 16 of the Constitution of India, which represent the fundamental rights of the citizens in general, also act as the foundation of the guarantee that the women of India cannot be treated inferior to their counterparts in any sphere of life.

As a result of this judgment of the Supreme Court of India, Complaints Committees have been constituted where working women can lodge their complaints. The Supreme Court has formulated some more guidelines to protect the interest of women. There is need to create awareness of the rights of female employees in this regard in particular by prominently notifying the guidelines in a suitable manner. The Supreme Court hopes that appropriate legislation in this matter will also be enacted.

Another case came up before the Supreme Court of India in which a senior IPS officer had harassed a lady IAS officer by hitting her at back (Rupan Deol Bajaj’s Case) His conduct was found to be against moral sanctions, which did not withstand the test of moral decency and modesty and which projected unwelcome sexual advance.

4.15 FEMALE FOETICIDE
The birth of a female child is considered a curse whereas the birth of a male child is celebrated. These days the incidence of female foeticide is
widely prevalent in India. It is not only immoral and unethical but also an offence to abort the foetus of a girl child. To check this widespread practice, the Indian Parliament in its wisdom enacted the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The Preamble, inter alia, provides that the object of the Act is to prevent the misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

Against female foeticide, the Supreme Court of India has spoken in the following eloquent words: "It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that the gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich parents who are well placed in the society. The traditional system of female infanticide whereby a female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advancements in medical technology."

In Centre for Enquiry into Health & Allied Themes (CEHAT) vs. Union of India284, the Supreme Court of India gave a number of directions to the Central Government, State Governments, Union Territories and other authorities for the proper implementation of the Act to check the evil practice of female foeticide. In this case, the apex Court asked for a compliance report also. Thus, the highest Court of the land has done its best to save the unborn female babies who have a right to be born, to bloom and blossom to their fullness.

The Supreme Court of India has also come to the aid of women workers. The Municipal Corporation of Delhi employed a large number of female workers (muster roll) who were made to work in that capacity for years. They had to work very hard in construction projects and maintenance of

284 AIR 2001 SC 2007
roads including the work of digging trenches etc. Their work was of perennial nature. The Municipal Corporation granted maternity benefits to their regular female workers, but denied the same benefits to these female workers on the muster roll. The workers' union espoused their cause in the Supreme Court of India which allowed the same maternity benefit to them, which was given to regular female employees:285

4.16 INTEGRATION OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The Directive Principles, contained in Parts IV of the Constitution (Articles 36-51), were designed to usher in a social and economic revolution in the country. Nevertheless, while the fundamental rights have been made enforceable,286 the directive principles have been specifically made unenforceable by Article 37, which states:

"The provisions contained in this parts shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws."

To begin with, the Supreme Court, adopting the literal interpretative approach to Article 37 ruled that Fundamental Rights take precedence over Directive Principles. In Champakam287 the court took the view that the fundamental rights are pre-eminent vis-a-vis directive principles. Das, CJ, speaking for the court observed:

...the Directive Principles of State Policy, which by Article 37 are expressly made unenforceable by a court cannot override the provisions found in Parts III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32. The chapter on fundamental rights is sacrosanct and not liable to be abridged by

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285 Municipal Corporation of Delhi v Female Workers (Muster Roll) and another, AIR 2000 SC 1274.
286 Article 13 of the Constitution
any Legislative or Executive act or order, except to the extent provided in the appropriate Article in Parts III. The Directive Principles of State Policy have to conform to and run as subsidiary to the chapter on fundamental rights. Nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body, the Court may not entirely ignore these Directive Principles of State Policy laid down in Parts IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.

In 1970, in Chandra Bhavan case, the court made a more explicit statement on the nature of relationship between the fundamental rights and directive principles: 'we see no conflict on the whole between the provisions contained in Parts III and Parts IV. They are complementary and supplementary to each other. Since then, the judicial attitude has become more affirmative towards directive principles. Now both fundamental rights and directive principles have come to be regarded virtually as co-equal, supplementary to each other. As was observed by Hegde and Mukherjea, JJ, in Kesavananda Bharati: 'the fundamental rights and directive principles constitute the "conscience of the Constitution"... There is no antithesis between the fundamental rights and directive principles ... and one supplements the other.' In State of Kerala v N.M. Thomas the court held that the directive principles and fundamental rights should be construed in harmony with each other and every attempt should be made by the court to resolve any apparent inconsistency between them.

In Pathumma v State of Kerala, the court said that the purpose of the directive principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. In Minerva

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288 Ibid. at 228
289 Ibid.
290 Chandra Bhavan Boarding and Lodging, Bangalore v State of Mysore AIR 1970 SC 2042 at 2050.
291 AIR 1973 SC 1461 at 1641
292 AIR 1976 SC 490.
293 AIR 1978 SC 771.
Mills case, Chandrachud, CJ, said: 'Those rights [fundamental rights] are not an end in themselves but are the means to an end. The end is specified in Parts IV. In Uni Krishnan case, Jeevan Reddy, J, said that 'the provisions of Parts III and IV are supplementary and complementary to each other,' and not exclusionary of each other and that the 'Fundamental Rights are but a means to achieve the goal indicated in Parts IV. In Pramod Bhartiya case, it was held that 'Fundamental Rights must be construed in the light of the Directive Principles.

In Randhir Singh vs Union of India, the court expounded the principle of 'equal pay for equal work' by reading Articles 14 and 16 with the Directive Principle contained in Article 39(d). This means that people working under the same employer ought to get the same scales of pay for doing identical work. The court has ruled that the principle of equal pay for equal work is not an abstract doctrine, but one of substance. Though the principle is not expressly declared by the Constitution to be a fundamental right, it is certainly a constitutional goal set forth by Article 39(d). The principle is applicable properly to cases of unequal scales of pay based on no classification or irrational classification of persons with different scales of pay doing identical work under the same employer. In Randhir Singh’s case the petitioner was a driver constable in the Delhi Police Force under the Delhi Administration. His contention was that his scale of pay should at least be the same as that of other drivers in the service of the Delhi Administration. Accepting his plea, the court made the following comment on the fact-situation in this case (per Chinnappa Reddy, J):

295 (1993) 1 SCC, 645
296 Ibid at 2230
298 Randhir Singh v Union of India AIR 1982 SC 879.
299 Article 39(d) says: 'The State shall, in particular, direct its policy towards securing... that there is equal pay for equal work for both men and women.'
Hitherto the equality clauses of the Constitution, as other Articles of the Constitution guaranteeing fundamental and other rights, were most often invoked by the privileged classes for their protection and advancement and for a 'fair and satisfactory' distribution of the buttered amongst themselves. Now, thanks to the rising social and political consciousness and the expectations roused as a consequence, and the forward looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the Court with touching faith and confidence in the Court.\textsuperscript{301}

The court went on to say to the vast majority of the people in India, the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them, the equality clauses will have some substance if equal work means equal pay.

Thus, where all things are equal, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments.\textsuperscript{302} So far as daily wagers are concerned Supreme Court in the case of State of Haryana vs Tilak Raj\textsuperscript{303} has held that daily wager in Haryana Road ways are not entitled to equal pay with regular and Permanent employees on the basis of principal of Equal pay for Equal work. The daily wagers hold no post. A scale of pay is attached to a definite post. However, the state has to ensure that minimum wages are prescribed for such workers and the same is paid to them.

\textsuperscript{301} Randhir Singh vs Union of India AIR 1982 SC 879

\textsuperscript{302} The principle of equal pay for equal work was reiterated in: P. Savita v Union of India AIR 1985 SC 1124; Dhirendra Chamoli v State of Uttar Pradesh (1988) 1 SCC 637; Surinder Singh v Engineer-in-Chief CPWD (1986) 1 SCC 639; Grh Kalyan Kendra Workers' Union v Union of India AIR 1991 SC 1173. Thus earlier view of Supreme Court as expressed in Kishori Mohanlal Bakshi v Union of India AIR 1962, SC 1139 i.e the abstract doctrine of equal pay for equal work had nothing to do with Article 14. has undergone a change with the passage of time.

\textsuperscript{303} AIR 2003 SC 2658
In Bandhua Mukti Morcha vs Union of India\textsuperscript{304} the Supreme Court read Article 21 with such Directive Principles as Articles 39(e) and 39(f) and Articles 41 and 42 to secure the release of bonded labour and free them from exploitation. The court observed: 'this right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39, 41 and 42.\textsuperscript{305}

The Supreme Court has read Article-41, 45 & 46 of Directive Principles of State policy along with Article-21 of the constitution and has held that Article 21 guarantees the right to education because of the fundamental significance of education to the life of an individual and of the nation. As was observed in Unni Krishnan: 'The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the Directive Principles in Part IV of the Constitution.\textsuperscript{306} This meant that the court restricted the content of the right to education to the extent of fulfilling Articles 41, 45 and 46. Therefore, instead of obligating the State to provide education up to any level (medicine, engineering, etc.) as was sought to be done in Mohini Jain\textsuperscript{307}, the court in Uni Krishnan confined the State obligation to providing free education till the age of 14, taking into consideration the 'content and parameters' of Articles 45 and 41.\textsuperscript{308}

\textsuperscript{304} AIR 1984 SC 802
\textsuperscript{305} Ibid at 811.
\textsuperscript{306} Unni Krishnan vs State of Andhra Pradesh AIR 1993 SC 2178, 2231.
\textsuperscript{307} In Mohini Jain vs state of Karnataka (1992) 3 SCC 666 the court obligated the State 'to make an endeavour to provide educational facilities at all levels to its citizens.
\textsuperscript{308} Owing to various decisions of the Supreme Court and the law laid down by it relating to the right to education by the 86\textsuperscript{th} (Constitutional Amendment) Act 2002, Article 21-A has been added to the constitution. This Article now expressly makes the Right to education a fundamental right for all children between 6 and 14. It provides that the State shall provide free, compulsory elementary education to all children aged 6-14 in such manner as the state may, by law, determine.
4.17 PENSION

In D.S. Nakara v Union of India,309 the Supreme Court gave relief to government pensioners. The government announced a liberalized pension scheme applicable to government servants who had retired after 31 March 1979. The court ruled this to be discriminatory and applied the scheme even to those who had retired before 31 March, 1979. The court invoked Articles 14, 38(i), 39(e), 39(d), 41 and 43(3) and evoked the word 'socialist' in the preamble to the Constitution to reach this conclusion. The court emphasized that the State action must be directed towards attaining the goal of the directive principles so as to set up a welfare state in India. The main aim of a socialist state is to eliminate inequality in income, status and standards of life. In old age, socialism aims at providing economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. Article 41 enjoins the State to ensure a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and enjoyable leisure, relieving the boredom and the humility of dependence in old age. The court ruled apropos Article 14 that all pensioners form one class for the purpose of revision of pension and the division of pensioners into two classes on the basis of the date of retirement was not based on any rational principle because a difference of two days in retirement could have a traumatic effect on the pensioner. Such a division was arbitrary and unprincipled as there was no acceptable or persuasive reason in its favour, and hence was invalid under Article 14. The court, therefore, applied the liberal formula to all pensioners irrespective of the date of their retirement.

The instant judgement is closely interlaced with considerations of socio-economic justice and welfare. The court's basic approach was that the pensioners in their old age should be able to live at a standard equivalent to the pre-retirement level. As the court said graphically, 'We

309 AIR 1983 SC 130.
owe it to them and ourselves that they live, not merely exist. The court was influenced by the fact that 'the old men who retired when emoluments were comparatively low' were now 'exposed to vagaries of continuously rising prices' and 'the falling value of the rupee consequent upon inflationary inputs'. In another case, the court stated that pension is a right, not a bounty or gratuitous payment. The payment of pension does not depend on the government's discretion but is governed by the relevant rules, and anyone entitled to pension under the rules can claim it as a matter of right.

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310 Poonamal vs Union of India AIR 1985 SC 1196.