Chapter - 4

PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM

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CHAPTER 4
PUBLIC INTEREST LITIGATION
AND
JUDICIAL ACTIVISM

I. DEFINING THE SPHERE OF JUDICIARY

A strong, independent, impartial and well-organised judiciary plays an important role in the democratic system of governance. It not only prevents the arbitrary use of governmental authority but also safeguards the rights and liberties of citizens. Moreover, under the federal form of government, the judiciary has the additional role of the guardian of the constitution.¹

This view of judiciary having an independent sphere is an off-shoot of the famous doctrine of separation of powers – the legislative powers of the Parliament and the judicial powers of the Supreme Court, which is one of the three broad features of the Constitution. The others are – Rule of law, i.e. supremacy of law; and distribution of powers between various levels of Government, i.e. Central, States and Local.

Montesquieu and Locke in Europe and Madison in U.S.A. believed that separation of powers with checks among the three branches of the government will ensure smooth working of the legal system. The basic

premise of the doctrine of separation of powers is limited role of government, limited expenditure and limited administrative structure.\(^1\)

The doctrine also assured that legislature will play a leading role and the other two organs, i.e. judiciary and administration will be neutral.\(^2\) The logic behind the doctrine was that legislature will take care of the interest of the majority of the population and judiciary will protect minority rights and administration has only to implement the statutes passed by the legislature.

In India the demand for the separation of the judiciary from the executive owes its origin as far back as times of Raja Rammohan Ray as a result of reaction to the British rule which combined the two functions in order to suppress the national movement. Because they were concerned not with justice so such as to keep their power by all means fair or foul.\(^3\)

Soon after Rammohan Ray a band of devoted workers of whom Mr. Dadabhai Naroji was the most prominent took up the cause and association were formed for the purpose in Bengal, Bombay and Madras. With the spread of education the movement gained in volume and

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momentum and the Indian National Congress took up the subject in 1885. The public opinion about this demand was so strong that the Constituent Assembly could not resist it in spite of the difference of the opinion between two groups. While one group consisting of Bakshi Tekchand, Rik Sidwa and H.V. Kamatu supported the separation, the other group consisting T.T. Krishnamachari, K.M. Munshi and B. Das opposed it. In the original Draft Constitution there was no provision for it but due to the pressure of public opinion, Dr. B.R. Ambedkar introduced it on the 24th November, 1948, in the form of an amendment and thus a new Article 39A was proposed to the Draft. Later on, in the final draft the articles were renumbered and Article 39A. thus become Article 50 of the constitution.¹

II. MEANING, DEVELOPMENT AND WORKING OF JUDICIAL ACTIVISM

A comparatively recent development in the judicial field is the emergence of judicial activism which is essentially action by the judiciary to realise social justice. According to Justice P.N. Bhagwati, it is nothing but another form of constitutionalism which is concerned with substantivisation of social justice. It tries to free the judiciary from constraints of traditional judicial processes in the interests of social justice and permits or rather enjoins a more dynamic interpretation of the social values enshrined in the Constitution, beyond what the framers of

Constitution had contemplated. A good example of judicial activism is seen in the Supreme Court ruling that legal aid to the poor, accused in a criminal trail, is an essential requirement of reasonable, fair and just procedure and is implicit in Article 21. So also is its advocacy of the right to speedy trial and its view that the right to life includes the right to live with basic human dignity and the right to livelihood.

MEANING OF JUDICIAL ACTIVISM

Judicial activism is not a new phenomenon, way back in 1893, Justice Mahmood of the Allahabad High Court delivered a dissenting judgement which served the seed for judicial activism in India. It was a case of an under trial who could not afford to engage a lawyer. So the question was whether the court could decide his case by merely looking his papers. Justice Mahmood held that the precondition of the case being heard would be fulfilled only when somebody speaks.¹ In fact, Judicial activism is not a distinctly separate concept from usual Judicial activities. The expression activism lexical as well as ordinary parlance, means ‘being active’, doing things with decision and the expression activism should mean one who favours intensified activities.² In this sense every Judge is,

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or at least, should be an activist, as Justice Krishna Iyer observed, every judge is an activist either on the forward gear or on the reverse.

The activity of Judiciary can be of two types, i.e. either in support of the legislative and the executive policy choices or in opposition to them. But it is the latter pattern which is usually understood as judicial activism. The essence of true judicial activism is the rendering of decisions which are in tune with the temper and tempo of the times. Hence an activist judge activates the legal mechanism and makes it play a vital role in socio-economic process. Activism on the part of the judiciary furthers the cause of social change or articulates the concept such as liberty, equality or justice. In contrast to the traditional concept of judiciary as a mere umpire, it works as an active catalyst in the constitutional scheme. Therefore, judicial activism refers to the power of judicial review dealing with the issues which they have traditionally not touched.

Judicial review is not an expression exclusively used in constitutional law. Literally, it means the revision of the decree or sentence of an inferior court by a superior court. Under general law, it works through the remedies of appeal, revision and the like, as prescribed by the procedural laws of the land, irrespective of the political system which prevails. Judicial review, has, however, a more technical significance in public law, particularly in countries having the written
Constitutions. In such countries it means that the courts have the power of testing the validity of the legislative as well as other governmental actions.¹

Thus the expression judicial review can be used both in a narrow sense and in a wider sense. In its narrow sense, judicial review is essentially collateral. It does not go into the merits of the impound decision but examines only its constitutionality or its basic legality. The attack is collateral. Here the contention is not that on merits the impound decision was wrong but that decisions was given either without jurisdiction or that it was contrary to the Constitution or to the fundamental provisions of a statute under which the administrative authority was acting.²

In its wider sense, judicial review would include even appeals on the merits of decision of the administrative authority or even civil or criminal courts. All the questions of the fact and law, i.e. merits of the whole case would be open to review. In fact it is reconsideration of case by a higher court.³ Hence it is a usually a vertical review. In this type of review, dispute under test may be between two private parties or between a private party and the State or a public authority, but it is

³ Supranote 1, p. 21.
mostly a question of private law. But the narrower view is essentially a question of public law. For all practical purposes judicial review has acquired a narrow usage to signify the power of the courts to pass upon the constitutionality of legislative acts which fall within their normal jurisdiction to enforce such as they find to be unconstitutional and hence void.¹

The collateral judicial review may be of two kinds depending on the nature of the State action against which it is directed. If it is a review of action taken by the executive department or administrative authorities of State, it is called judicial review of administrative action. If it is a review of a statute of legislative or subordinate legislature it is called judicial review of legislation.

Both kinds of judicial review have much in common regarding their origin and rationale, but their development has been on different lines. The basic difference is the difference between rule of government and limited government. The former works under parliamentary sovereignty, but the latter postulates constitutional limitations of legislative power. Review of administrative action is purely judicial while the review of legislation is semi-political as it has to test the validity of legislative policy on the anvil of the Constitution. The former is used very widely because

the administrative action touches individuals at many more points that the validity of legislation does judicial review of administrative action is an essential part of the rule of law. The area of its exercise is therefore expanding to meet the felt necessities of the times. The more the administrative action of the welfare State expands, the more the scope of its judicial review expands on the other hand, the judicial review of legislation may or may not be an essential part of the rule of law, depending upon the conditions obtaining in a particular country or society.¹

DEVELOPMENT OF JUDICIAL ACTIVISM

After understanding the meaning of judicial review, it would be relevant here to look into its genesis. It is generally asserted that the institution of judicial review originated in United States of America but a deeper analysis reveals that this is true only in a very limited sense because historically, the origin of this situation can be traced to English legal history. The genesis of judicial review may be traced in the celebrated pronouncement of Chief Justice Lord Coke in Dr. Bonham case where he asserted that an act of Parliament could be subjected to judicial review and adjudged void by the court. This view was reiterated by the next Chief Justice Hobart in 1615.² The doctrine of Judicial Review,

¹ Supranote 9, p.32.
² Ibid, p.45.
however, did not take root in England because of two reasons. First, the sovereignty of Parliament did not brook any rival, i.e., the Power of Parliament is absolute and without control. Second, the spirit of moderation of British people ensured the rule of law without judicial review.\(^1\) Thus, it failed to create any permanent impression in England, the land of Parliamentary sovereignty. In this way the modern concept of judicial review is, therefore, considered to have taken birth in the United States.

It was in *Marbury v. Madison* case, that Chief Justice Marshall of the American Supreme Court in the year 1803, judicially adopted the principle of judicial review by declaring ‘constitution is what Judges say it is’. This doctrine of judicial review as propounded by Chief Justice Marshall has reiterated by the judge of repute like Taney, even Hungnes, Harlan, Stane, Warren and Burger. Thus it can be concluded that the idea of judicial review sparked in England but was adopted as a jurisprudential concept only in the USA.

The basic issue of judicial review in the modern democratic society inheres within itself the apparent possibility of an anti-thesis between a rigid attitude in reserving the fundamental human rights and the effective pursuit of a social welfare objective by the legislature in accordance with

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the dominant socio-economic political factors.¹ Judicial review under the Constitution of India stands as a class by itself. It represents a synthesis of the ideas of several Constitutions of the world, particularly of UK and USA, processed and adjusted to meet the specific situations, arising out of the prevailing socio-economic and political conditions within the country. Under the Government of India Act 1935, the absence of a formal Bill of Rights in the constitutional document very effectively limited the scope of the courts review power to an interpretation of the Act in the light of the division between the Centre and the States units.² But in Post-independent India the judiciary was contemplated as an extension of the rights and an arm of social revolution.³ Therefore, judicial review was considered to be an essential condition for the successful implementation of Fundamental Rights and Directive Principles of State Policy.

In India, the proper position of the judiciary and its power of judicial review should be understood in the light of the governmental structure adopted by the framers of the Constitution. The governmental structure was a via media between the American style of judicial supremacy and the English principle of parliamentary sovereignty. The framers of the Constitution adopted the British model of parliamentary government and

made the Parliament the focus of political power in the country, however, they did not make it a sovereign law-making body like its English counterpart. Although the power of judicial review is expressly mentioned in the Constitution, it is not implied one like that of the Constitution of United States. Unlike in the United States, the expression used is 'procedure established by law' and not 'due process of law'. It has been provided in the context of federal structure with defined and delimited competence of Central and State legislature. In the long drawn controversy regarding the concept of individual rights vis-a-vis society's needs, that characterised the deliberations of the Constituent Assembly during the framing of most of the constitutional judicial review was circumscribed to a great extent.

Members of the Constituent Assembly agreed upon one fundamental point, that judicial review under the new Constitution of India was to have a more direct basis than in the Constitution of USA, where the doctrine was more on 'inferred' than 'conferred' powers, and more implicit than expressed through constitutional provisions. In the report of the Adhoc Committee of Supreme Court, it was recommended that a Supreme Court, with jurisdiction to decide upon the constitutional validity of Acts and laws can be regarded as necessary implication of any federal scheme.¹

¹ Reports of the Adhoc Committee of Supreme Court, 1st Series, p. 61.
This was eventually extended to and interpretation of the laws of executive orders on the touchstone of Fundamental Rights. In the Draft Constitution of India, this power of juridical review in relation to Fundamental Rights found formal expression in Article 5(2) and Article 25(1) and (2), which when adopted by the nation’s representatives in the Constituent Assembly on 26th November, 1949 became new Articles 13(2), 32(1) and (2), respectively under the Constitution of India. However, there was a sharp controversy among the members of the Constituent Assembly over the question of reconciling the conflicting concepts of individual fundamental and basic results and socio-economic needs of the nation. A compromise had to be struck between the two extreme view-points of individualism and socialism, and judicial review, which was recognised as the basic and indispensable precondition for safeguarding the rights and liberties of the individuals was sought to be tempered by the urge for building up a new society based on the concept of socio-economic welfare.

The differences of opinion on the acceptance or rejection of the “due process of law” clause, were manifested at least between two leading figures namely K.M.Munshi, who wanted its adoption and Alladi Krishnaswami Ayyar who opposed that move. Thus the “due process of law” clause became the “first causality”. In Article 21 of the new Constitution of India (Article 15 of the Draft Constitution). It was replaced
by “except according to procedure established by law”. In a note Article to 15 of the Draft Constitution, the Drafting Committee justified and referred to Article 31 of the Japanese constitution of 1946.\(^1\) One reason for limiting the scope of judicial review could be that the framers of the Constitution may have feared that the unbridled power of judicial policy making could usher in a series of “judicial vagaries” and prevent the national leadership from achieving its socio-economic goals in pursuance of a welfare State. As G. Austin puts it: The Assembly had created an idol and then fettered at least one of its arms...... the limitations on the court’s review power.... however were drafted in the name of social revolution.\(^2\)

Simultaneously, a cluster of provision were incorporated into the constitutional document so as to restrict the rights envisaged in Articles 19, 21 and 31 to reduce the Supreme Court’s power of judicial review to “formal view”. Besides this a comparatively flexible amending procedure was adopted to improve the ultimate will of the popular representative in the matter of remaining constitutional limitations. Thus to all intents and purposes the seed of discord between the legislature and the judiciary in India was unconsciously sown by the fathers of the Constitution. D. D. Basu rightly points out that: “The factors which fostered growth of

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\(^1\) Constituent Assembly Debates, 13 December 1948, p. 1000.

\(^2\) Supranote 18, p.174.
judicial supremacy in the USA are either absent or are not so much prominent in our constitutional system.¹

The power of judicial review of legislation have been specifically recognised in Article 15, 32, 131, 216 and 137 of the Indian Constitution. The courts can strike down a law passed by the Parliament or State Legislatures if (a) it is beyond their legislative competence as provided in Articles 245, 246, 248 and other provisions of the Constitution, or 245(b) it violated any fundamental rights as provided in Article 246(b); or 248(c) it transgressor any other provision of the Constitution.

Judicial review over executive action signifies that if any executive action is taken without the authority of law it can be stuck down, or if any executive action violates any fundamental right of an individual, the court can enforce that rights by issuing an appropriate writ. Similarly, if the Government has made any rule, order or by-law, which is not within the scope of delegated legislation, such rule, order or by-law may be struck down. Through the power of judicial review, the Supreme Court can keep a check in arbitrariness and illegality which arises out of manifold authority exercising discretionary powers.

¹ Supranote 15, p.160.
WORKING OF JUDICIAL ACTIVISM

The working of the judicial decision-making during last four decades has been marked by two conflicting attitudes of judicial self-restraint and judicial activism at different times. The interpretation of nature and scope of judicial review in India began with the case of A.K. Gopalan v. State of Madras, (AIR 1950 SC 27). The decision in this case scrupulously avoided the notions of natural justice and due process and constructed the law in favour of literal judicial interpretation in India and provided a firm base for judicial self-restraint. The guidelines set by the Supreme Court in the case of Romesh Thapar State of Madras v. Champakam Dorai Rajan (AIR 1951, SC 2261), where fundamental rights were made sacrosanct, (see M.S.M. Sharma v. Sri Krishna, (AIR 1959 SC 395), Shankar Prasad v. Union of India (AIR 1951 SC 458), and Sajjan Singh v. State of Rajasthan, (AIR 1965 SC 456). “This period of 17 years (1950-67) reflected a trend of judicial self-restraint. There was no confrontation between the judiciary and the executive though tensions between the judiciary and the legislature and the executive were visible. Judicial review during this period failed to strike a happy compromise between the two extremes of legislative penchant on constitutional protection of individual liberties.”

1 Supranote 15, p.70.
This tension, however, turned into confrontation in 1967 when the constitutionality of the Constitution (17th Amendment) Act was challenged in *I.C. Goloknath v. State of Punjab*, (AIR 1967 SC 1943). The Court ruled that Parliament had no power to amend the Constitution embodied in Part III, thereby over-ruled the court’s earlier decision in the *Shankar Prasad case* and *Sajjan Singh case*. The next landmark judgement was the famous Bank Nationalisation case *R.C. Cooper v. Union of India*, (AIR 1970 SC 564), where the Court declared the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 void. The era of judicial activism started by the *Goloknath case* and the *Bank Nationalization case* was carried forward by the Privy Purse case (*Madhav Rao Sindhia v. Union of India* (AIR 1970 SC 530). The open confrontation between the Parliament and the judiciary led to the declaration of the mid term poll in 1971 in which Mrs. Gandhi won with a thumping majority and subsequently the Constitution 24th, 25th and 29th Amendment Acts were pushed through the Parliament.

The constitutional validity of the Constitution 24th, 25th, 26th and 29th Amendment Acts was challenged in 1973 in *Keshvanand Bharati v. State of Kerala*, (AIR 1973 SC 1961) in which the Supreme Court reversed the ruling of the *Golaknath case* and allowed Parliament to exercise the power to amend the Constitution but not the basic structure of the Constitution. The confrontation between the legislature and the
judiciary led to an extreme step by the Government to bring pressure on the courts to soften them and the concept “committed judiciary” as a means was revealed by Mohan Kumar Mangalam.

Soon the three Senior judges of the Supreme Court Justices Shelat, Hegde and Grover, who were in the *Keshavanand Bharti case* bench, were suppressed and Justice A.N. Roy was appointed as the Chief Justice of India on the retirement of Justice S.M. Sikri. This was something like Roosevelt’s threat to ‘pack the court’. The suppression subsequently of Justice H.R. Khanna was yet another instance of packing the court.

The decision of Justice J.M.L. Sinha of the Allahabad High Court on 12th June, 1975 in which Prime Minister Mrs. Indira Gandhi was held guilty of corrupt electoral practices and was disqualified to hold public office for the next six years, led to the declaration of internal emergency on 25th June, 1975. The Supreme Court soon struck down Article 328A(4) added by the Constitution (39th Amendment) Act and thus maintained the dignity of justice. But the Supreme Court soon descended from the right into dare valleys below - where dwells the Habeas Corpus case. (*ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207). The five separate judgements in this case reflects the height of judicial self-restraint. With the introduction of the Constitution (42nd Amendment) Act to institutionalise the emergency, the power of judicial review was
taken away to establish the complete and total sovereignty of Parliament. However, the tide was turned after the passing of the Constitution (Forty-third Amendment) Act in December, 1977 by Janata Government, which rested the pre-emergency position. Parliament’s unlimited power to amend the Constitution was challenged in Minerva Mills v. Union of India, AIR 1980 SC 1789, which was a set back to the unlimited powers of Parliament to amend the Constitution when it said that basic structure of the Constitution could not be altered. After the Emergency, judiciary did show some signs of activism but the judgement of the Supreme Court in the famous judges Transfer case (S.P. Gupta v. Union of India, AIR 1980 SC 1622) once again raised the question of the relationship between the executive and the judiciary. Many people felt that those decisions deflected ‘judicial restraint’. However, in several other issues the Court ruled in favour of the citizen. The most important dimension of the verdict in the judges case was that it laid down the principles of litigation in the public interest as opposed litigation for the protection of one’s own interest thereby enlarged the area of judicial review.

III. PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM

PIL and judicial activism go hand in hand. PIL itself is the result of judicial activism. Under Article 32, violation of a fundamental right must first be shown before the Supreme Court can directly entertain a PIL matter. Besides other rights, life and personal liberty in Article 21 have
been given a very wide interpretation, e.g., in Francis Coralie Mullin v. Administrator, Union of Territory of Delhi (AIR 1981 SC746), wherein the Court has observed through Bhagwati J., "we think that the right to life includes the right to live with human dignity and all that goes along with it. Every act which offends against or impairs human dignity could constitute deprivation pro tanto of this right to live...." It has been reiterated in subsequent cases, for example in P. Nalla Thampy Terah v. Union of India (AIR 1985 SC 135), Ranganath Misra, J., has observed, "The right to life has recently been held by this court to connote not merely animal existence but to have a much wider meaning to include the finer graces of human civilization (e.g. efficient and safe means of communication).\(^1\)

In the Bandhua Mukti Morcha v. Union of India (AIR 1984 SC 802), Bhagwati J. has observed "... the state can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right five within human dignity enshrined in Article 21 ... He held that the Central Government and State of Haryana can, therefore, be obliged by writ petition under Article 32 to ensure observance of various social welfare and labour laws. In Neeraja Chawdhary v. State of Madhya

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Pradesh (AIR 1984 SC 1099), Bhagwati, J., has held that Articles 21 and 23 of the Constitution would require not only the identification and release of bonded labourers, but also their rehabilitation on release. The direction extended to chalking out programmes of rehabilitation and its supervision by a vigilance committee in which persons suggested by the court were to be taken as members.¹

This widest amplitude of the court can be given to the right to life and personal liberty is most welcome. But then the point is that all the sufferings and socio-economic deprivations of the Indian People, Political mismanagement and corruption, and any others conceivable governmental action or inaction can be said to be violative of Article 21. India being a welfare State, legislation already exist on most matters (and the existing legislation can/should also be given a most comprehensive interpretation in the general public interest to covers matters not specifically provided for). If the court starts enforcing all such legislation under the spacious plea that non-enforcement is violative of Article 21, perhaps no State activity can be spared from the purview of the Supreme Court as a PIL matter. Its logical extension could mean the taking over the total administration of the country from the executive by the court.²

² Ibid.
Now the question arise are there any limits to such judicial activism?

According to Archibald there are mainly two worries arising out of recent activism in constitutional adjudication by the court. Firstly, there is the concern that the court may sacrifice the power of legitimacy that attacks to decisions within the traditional judicial sphere rendered on the basis of conventional legal criteria, and so may disable itself from performing the narrower but nonetheless vital constitutional role that all assign to it. And secondly, there is fear that excessive rely upon courts instead of self government through democratic processes may deaden people’s sense of moral and political responsibility.

Without the power of legitimacy, moreover, the judicial branch would be exceedingly vulnerable to assault and reprisals from other branches of Government.

The powers of the Supreme Court to command acceptance and support not only for its decisions but also for its role in Government seems to depend upon a sufficiently widespread conviction that it is acting legitimacy, that is performing the functions assigned to it and only those functions, in the manner assigned. The conviction of that is the resultant of many voices, not all carrying equal weight: of the opinion of
the legal profession, of attitudes in the executive, of the response in State Governments, of the press and of public opinion.

Of course, there are no set standards for judging the legitimisation of the activist approach of the Supreme Court, however it seems to be only fair to comment that discordant notes have been sounded from several quarters. It requires on independent study to evaluate and assess the legitimisation that the PIL associated activism has received in the country. When the court is the final interpreter of its own powers, it does not appear to any checks on judicial activism can be read other than its legitimisation.

Justice Landau of the Supreme Court of Israel on the limits of the judicial process suggested:

Regarding the limitations of the judicial process, courts do not possess the necessary tools to conduct a thorough inquiry into issues of social and economic policy which may rise in the judicial review of parliamentary legislation. A court may decide what should not be done, but the subject-matter may still require a further decision what should now be done instead of the solution rejected. In that respect a court is generally powerless since it does not possess the power of the sword or purse.

As far as the protection of human rights are concerned, the law is but a second line of defence protecting the citizen against aggression of governmental authority and which is no less vital – protecting society against internal disorder. The first line of defence is the general spirit of
law obedience which prevails in a community and that spirit has to be sustained by generally accepted notions of legality, of morality and common decency. When that first line of defence weakens, a correspondingly greater strain is imposed on the second line, greater than that line was designed to bear and thus increases the danger of its collapse. If that should happen, nothing will remain to protect society against anarchy. Salvation must come from the strengthening of those moral restraints which in any days have so woefully weakened. It is the spirit that matters....

Judicial activism in constitutional interpretation is a most healthy trend. It makes the Constitution a living, dynamic document and enables the accommodation of the aspirations of the vast masses of our people. But it has its limits. In a system of Government wherein the court is the final interpreter of the Constitution and its own powers, this activism must be legitimised by its constituencies and the consumers of the administration of justice. In any case, the delicate balance between the three organs of the State any time must not be overloaded in favour of any one of them beyond tolerable limits.

The power to punish for contempt, or for entertaining PIL and the issuing of directions under it, or for money compensation or exemplary costs must be used extremely sparingly by the Supreme Court. That extreme area seems to be that of illegal detention and custodial violence.
The norms must be adequately developed by the court as to when the one or the other remedy shall be granted. The remedy of claiming compensation from the lowest courts for the violation of any right is already available under the law. It should be pursued in appropriate cases. The shortcomings of delay, heavy stamp duties and low awards of compensation, however, need to be rectified.

Judiciary and the legal processes can not be an answer to all over administrative ills. The doctrine of separation of powers is based on sound logic and has been evolved through long experience with societal institutions. We should not, therefore, seek on the improvement through judicial processes alone, perhaps the better solution might be found in other improvements.

Our law, however, has not yet developed adequate principles of individual official responsibility for administrative wrong, of course the officer has to be protected in all respects if he acts in good faith. But it only encourages, and induces administrative irresponsibility and callousness if the officer is able to escape personal liability even where he is grossly negligent, biased or acting without any jurisdiction. The administration in our country cannot be made to all responsibly only by fixing responsibility on the State, liability must be fixed on individual officers as well. In all PIL matters before the Supreme Court, the action or inaction leading to violation of Fundamental Rights has been the
consequence of the negligence, bias, callousness or crussedness of individual officers, whether it might be long detention of undertrial prisoners, custodial violence, non-implementation of labour laws, non-identification and non-release of bonded labour or any other. The individual functionary shall hardly change his ways if all that ultimately happens is that only the State an amorphous entity, is held responsible.

IV. CONCLUDING REMARKS

The judicial activism manifested in the strategy of PIL paves the way for the participation of public spirited and enlightened people in India’s development process and displays the potentiality of the legal system to offer justice to the poor and the oppressed. The strategy has brought to light many a medieval practices still prevalent in India such as relief to prisoners, plight of women in protective homes, victims of the flesh trade and children of juvenile institutions and exploitation of the bonded and migrant labourers, untouchables, tribal etc. The attempt has been made to show how in taking up such cases, the Supreme Court is emerging as the guardian of the rights and liberties of the victims of repression, cruelty and torture.

Hence the Supreme Court of India in its activist role vis-a-vis PIL has taken a goal-oriented approach in the interest of justice by simplifying highest technical and anachronistic procedures.
By enlarging the scope of Article 32 and by accelerating the process of socio-economic revolution, it has brought justice to the doorstep of the weak, the unprivileged and exploitative section of society and therefore, has revolutionised constitutional jurisprudence in the 1980’s.