ROLE OF PUBLIC INTEREST LITIGATION IN SOCIAL JUSTICE

To define the concept of social justice on which is woven the concept of public interest litigation, we must answer two question. Firstly, what are the principles of social justice? Secondly, what do we mean by a just or unjust society? Let us begin with the former question; in an ancient formula a society is just if it renders to its members what is due to them. But the next question to be asked would be what is due to them? This may be answered that what is due to them justly is their right which is accorded to them by the laws of the State. The laws of the State however may be themselves unjust and, if so, it follows that social justice cannot wholly consist in their observance, since social justice includes moral as well as legal justice. One might say that society is just if its laws and actions conform to its moral standards. But even the prevailing moral principles of a society may be unjust or oppressive.

It may be said that a man's due or right is that which by virtue is not merely of the law or of prevailing moral rules, but of valid moral principles, and that a society is just if it accords to its members what it is required to accord to them through valid moral principles. According to this view, social justice consists in the apportionment of good and evil, rewards and punishments, jobs and unemployment, in accordance with moral standards, which can be shown to be valid. In other words, social justice is any system of distribution and retribution which is governed by valid moral principles. This view, if true, still leaves unsolved the very difficult question, on which moral principles are valid, but it also simplifies matters by telling us that the answer to this question will provide the definition of justice. Whether justice can be defined as a process of distribution and retribution in accordance with the valid moral principles, seems
to depend on the fact that which moral principles turn out to be valid. Suppose the so-called principle of utility is understood, as understood by the utilitarian’s, to mean that the right course of action is simply that which produces the greatest quantitative balance of something good (say pleasure) over something evil (say pain) regardless of how this quantity is distributed. Suppose, furthermore, that this principle of utility turns out to be the only valid principle of morality. Then distribution and retribution in accordance with valid moral principles, will not coincide with what is called justice, though it may yield what is called beneficence. Justice is not simply the greatest possible balance of pleasure over pain or of good over evil. Justice has to do not so much with the quantity of good or evil as with the manner in which it is distributed. Two courses of action may produce the same relative quantities of good and evil, yet one course may be just and the other unjust because of the ways in which they apportion these quantities.

Justice, whether social or not, seems to have at its centre, the notion of an allotment of duties, goods, offices, opportunities, penalties, punishments, privileges, roles, status, and so on to persons-. Moreover, at least in the case of distributive justice, it seems centrally to involve the notion of comparative allotment. In fact, the historical quest for social justice consisted largely of attempts to eliminate certain dissimilarities as basis for difference of treatment and certain similarities as basis for similarity of treatment. That is, it seems to be part of the concept of justice that not all similarities justify (or justicize) similar treatment or all differences justify different treatments. The point of the quest for social justice has not been merely that similarities and differences in two people have too often been arbitrarily ignored; it has mainly been that the wrong similarities and differences have been taken as a basis for action. Similarities and differences should form the basis of action if it is to be just, but not all of them are relevant.
It is therefore agreed that justice prescribes equal treatment to equals and unequal treatment to unequal, but what are the relevant aspects in which people must be treated as equal or unequal for treatment of them to be just or unjust?

According to Plato and Aristotle, social justice does not involve any kind of equal allotment to all men. Justice is not linked with any quality in which men are all necessarily similar or which they all share by virtue of being men. It is tied to some property which men may or may not have, and which in fact, they have in varying amounts of degrees or not at all. Justice simply is the apportionment of what is to be apportioned in accordance with personal ability, merit, rank or wealth.

The concept of social justice which prevails in our culture has now been partly defined. According to this concept, a society is without justice insofar as it is without rules (statutes or precedents, written or unwritten rules, legal and moral rules); it must, in both its formal and informal aspects, treat similar cases similarly. It must also treat human beings equally, or it must show why—a requirement governs its rules as well as its acts and institutions. That is, the primary similarity to be respected is that which all men, as such, have but a just society must also respect some though not all differences. In particular it must respect differences in capacities and needs, and in contribution or merit. Such differences may often make it just to treat people unequally in certain respects, thus at least qualifying the prima facie requirement of equality. But many other differences, for example, differences in blood or colour, are not the basis for making a just society. The recognition of capacity and need, the recognition of contribution are not, however, the only principles of justice which may qualify the principles of equality.
The concept of social justice can be studied under the following heads:-

1) Equality and Social Justice
2) Social Justice in Social Dynamics
3) Social Justice and Law
4) Social Justice and Political Justice.

In another landmark judgment in M. C. Mehta v/s State of T.N.\(^{132}\) (known as Child Labour Abolition case), a three judges bench of the Supreme Court (comprising honourable Justice Kuldeep Singh, Justice B. L. Hansaria and S. B. Mazumdar. JJ) has held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work. The matter was brought in the notice of the Court by public spirited lawyer Sri M.C. Mehta through a public interest litigation under Art.32. He told the court about the plight of children engaged in Sivakasi CracKel Factories and how the constitutional right of these children guaranteed by Art. 24 was being grossly violated and requested the Court to issue appropriate directions to the Government to take steps to abolish child labour.

The Court issued the following directions-

(1) The Court directed for setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child compensation of Rs. 20,000 to be deposited in the fund and suggested a number of measures to rehabilitate them in phase manner.

(2) The liability of the employer would not cease even if after the child is discharged from work, asked the Government to ensure that an adult member of the child’s family gets a job in a factory or anywhere in lieu of the child.

(3) In those cases where it would not be possible to provide appropriate jobs the

\(^{132}\) AIR 1997 SC 699
Government would, as its compensation, deposit Rs. 5000 in the fund for each child employed in a factory or mine or in any other hazardous employment.

(4) In case of getting employment for an adult, the parent or guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent shall have to see that his child is spared from the requirement of the job as an alternative source of income interest-income from deposit of Rs. 25000-would become available to the child’s family and it is ensured that he continues his study up to the age of 14 years.

(5) As per Child Labour Policy of the Union Government, the Court identified some industries for priority action and the industries so identified are namely, ‘The Match Precious Stone Polishing Industry’ in Jaipur, Rajasthan the ‘Glass Industry’ in Firozabad; the ‘Brass-ware Industry’ in Moradabad; the ‘Handmade carpet Industry’ in Mirzapur, Bhadohi and the ‘Lock making Industry’ in Aligarh, Uttar Pradesh; the ‘Slate Industry’ in Manakpur, Andhra Pradesh and the ‘Slate Industry’ in Mandsaur, Madhya Pradesh for priority action by the authorities concerned.

(6) The employment so given could be in the industry where the child is employed, be it a public sector undertaking, and would be manual in nature, inasmuch as the child in question must be engaged in doing manual work. The undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

(7) For the purpose of collection of funds, ‘a district could be the unit of collection so that the executive head of the district keeps watchful eye on the work of the inspectors. In view of the magnitude of the task, separate cell in
the Labour Department of the appropriate Government would be created. Overall monitoring by the Ministry of Labour of the Union Government would be beneficial and worthwhile.

(8) The Secretary of the Ministry of Labour, Union Government is directed to file an affidavit within a month before the Court about the compliance of the directions issued in this regard.

(9) Penal provisions contained in the 1986 Act will be applicable where employment of a child labour prohibited by the act is found.

In so far as the non hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than 4 to 6 hours a day and he/ she received education at least two hours each day. The entire cost of education shall be borne by the employer.

The Court observed that the task is big, but not such that would prove either unwieldy or burdensome. The financial implication would be such as to prove damper because the money after all would be used to build up a better India.

The verdict gives a new hope to the children of the country that a beginning is being made to honour the mandate in Articles 24, 39 (e), and (f), 41, 45 and 47 of the Constitution of India.

The expression ‘material resources of the community’ under Art 39 (b) covers the land held by private owners also. Such private land can be acquired by Government for public purposes such as for developing, constructing building and providing public amenities like shopping complexes, parks, roads, drains, playgrounds etc.
Articles 38 and 39 embody the jurisprudential doctrine of ‘distributive justice’. The Constitution permits and even directs the State to administer what may be termed “distributive justice”. The concept of distributive justice in the sphere of law-making should be applicable in dealings and transactions between unequal in society.

In State of Tamil Nadu v/s Abu Kavar Bai\textsuperscript{133}, the Court upheld the validity of a law enacted for the nationalization of transport services in the State on the ground that it was for giving effect to the directive principles contained in Article 39 (b) and (c). A nationalization scheme meant for the purpose of distribution or preventing concentration of wealth; as in the instant case, must have sufficient nexus to attract the operation of Article 39 (b) and (c). The Tamil Nadu Act is valid as it subserves nationalization policy.

In Pragati Varghese v/s Cyril Geore Varghese\textsuperscript{134}, the full bench of the Bombay High Court has struck down Section 1(C) of the Indian Divorce Act under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce. The court felt that it violates the fundamental right of a Christian woman to live with human dignity under Art. 21 of the Constitution. The Court also declared Sections 17 and 20 of the Act invalid which provided that an annulment or divorce passed by a District Court was required to be confirmed by a 3 Judges of the High Court. The Court said that Section 10 of the Act compels the wife to continue to live with a man who has deserted her or treated her with cruelty such a life is sub-human. There is denial to dissolve the marriage when the marriage has broken down irretrievably.

\textsuperscript{133} (1984) 1 SCC 516
\textsuperscript{134} AIR 1997 Bombay 349
In another significant judgment in Noor Saba Khatoon v/s Mohd. Quasim\textsuperscript{135}, the Supreme Court has held that a divorced muslim woman is entitled to claim maintenance for her children till they become major. The Court held that both under the Muslim Personal Law and under Section 125 of the Criminal Procedure Code, 1973 the obligation ruling was giving by the Court while allowing an appeal by Ms. Noor Saba Khatoon challenging the judgment of the Patna High Court which had reduced the amount of maintenance.

The Court made it clear that this right was not restricted, affected or controlled by divorced wife. Right to claim maintenance for two years from the date of birth of the children under Section 3(l) (B) of the Muslim Women (Protection of Rights or Divorce) Act, 1986 is also established.

The children of Muslim parents are entitled to claim maintenance under Section 125 of the Criminal Procedure Code for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of female, till they get married. The appellant Ms. Noor Saba Khatton was married to the respondent husband Mohd. Quasim according to Muslim rites on October 27, 1980. During the wedlock, three children—two daughters and a son—were born and subsequently the husband divorced the appellant. The Trial Court granted husband to pay at the rate of Rs. 200 P.M. for herself and as the rate of Rs. 50/- per month for each of the three minor children, the Appellate Court held that she was entitled to maintenance for two years under the Muslim Women Act, 1986. The Patna High Court further modified the Appellate Court’s order and held that only one child was entitled for maintenance to a period of two years.

The Supreme Court set aside the judgment of the Patna High Court. The Court held that the High Court fell in complete error in holding that the right to

\textsuperscript{135} AIR 1997 SC 32 80.
maintenance of the children under Section 125, Cr. P.C. was taken away and superseded by Section 3 (1) (B) of the 1986 Act. The Court directed the husband to pay the arrears of maintenance in respect of the children within one year in four equal quarterly installments; Any single default in the payment of arrears would entitle the appellant to recover the entire balance amount with 12 percent interest, as per the law.

Again the Punjab and Haryana High Court had directed a Muslim husband to pay alimony to his divorced wife and minor children even after the expiry of the Iddat period.

The High Court rejected the plea of husband that his liability ceased immediately after the expiry of Iddat period. The liability of the father to maintain his minor child has been finally settled by the Supreme Court in the Noor Saba Khatoon case, the Court said. Under Sections 125 to 128 of the Cr. P. C., 1973 a self contained procedure has been provided for a wife, divorced or not, to claim immediate means of subsistence to the applicant before she withered away due to the hard way of life and realities for lack of minimum means. It is applicable to all applicants irrespective of the community; caste or creed they belong to”.

The Court said, “We have opted for a secular republic, secularism under the law means that the State does not owe loyalty to any particular religion and there is no State religion. The Constitution gives equal freedom to all religion and everyone has the freedom to fellow and propagates his own religion. But the religion of individual or denomination has nothing to do in the matter of socio-economic laws of the State”. The freedom of religion under the Constitution does not allow religion to infringe adversely economic relations.
In subsequent Landmark judgment in **Danial Latif and another v/s Union of India**\(^{136}\), a five judges Constitutional Bench of the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Court said that a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which clearly extends beyond the *iddat* period in accordance with Section 3(1)(a) of the Act. Also, a divorced woman who has not remarried and who is not able to maintain herself after *iddat* period can proceed as provided under Section 4 of the Act against her relations who are liable to maintain her in proportion of the property which they may inherit on her death, according to Muslim Law, from such divorced woman including her children and parents. If the relatives are incapable of paying her maintenance, the Magistrate may direct the State Wakf Board established under the Wakf Act to pay such maintenance.

The above decisions of the court will make the job of introducing the Common Civil Code much easier.

It is a historic principle, applied in the celebrated case of **Dr. Bonham in Coke's Time** which states that ‘*no one shall be a judge in his own cause*’. Equally well established is the principle that ‘*both sides shall be heard*’. It is in fact in the area of procedure. That the widest measure of equality, the least tolerance of classifications, is to be found. *‘Equality before the law’* is a maxim of legal personality, governing access to courts and treatment before them. Alien and citizen, man and woman, pauper and prince, scoundrel and saint, all have the right to seek justice through the agency of the courts. This has been an evolutionary development, to be sure; the disabilities of married women well into the nineteenth century are a notable reminder of this. The right is, of course, an

\(^{136}\) JT 2001 (8) SC 218
abstract one unless there is a material provision to assert it effectively. This is the current stage of the process, in which the State is assuming an increased responsibility for legal aid to the indigent, some of it under the compulsion of the equal protection guarantee, for example, of the Federal Constitution of America.

Such a solution indicates the freedom of judges to "make" law within limits. But what are those limits? Justice Holmes put his view pithily when he said that ‘judges make law interstitially, that they are confined from molar to molecular motion’. Justice Frankfurter puts it more colloquially, saying that ‘judges make law at retail, legislators at wholesale’.

An analogy to science may be suggestive. How far does an experiment entail testing of scientific laws? In principle, an experiment tests not only the law which is its immediate target of inquiry but the whole system of laws of which this one is a part. Practically, however, the subject of the test will be much more limited, unless and until a more searching re-examination of anterior postulates seems to be required by the puzzling nature of the result or by an intuition that the result may be assimilated in a more satisfying way to the larger body of knowledge.

So also with the judges, normally, if only by reason of the need for economy of effort, the judge is content to select and "apply" the "rules" of law that appear to be immediately relevant. This process involves an illumination, refinement, and development of the rules themselves in the changing context. Nevertheless occasions arise when this course seems less than satisfactory. The

138 "The notion of a principle (or maxim) of conduct and the notion of meaningful action are interwoven." Peter Winch, The Idea of a Social Science, 1958, Humanities Press, New York, p. 63.
results may no longer appear sufficiently coherent, or predictable, or just so as to warrant the judge's stopping at the immediate rules; he is impelled to enter upon a regressive inquiry into the antecedent postulates of the system of rules, which he is applying. The theoretical scientist is perhaps more likely than the experimentalist to undertake searching, re-examination and framing of newer principles. In law, the legislator is, for a number of reasons, free than the judge, to engage in this sort of enterprise. By directing itself to the future and making flexible its provisions, legislation can more readily mitigate the unsettling effects of a change; by employing more varied techniques of ascertaining popular and expert opinion, legislation can ground itself more confidently in the necessity for change. The importance of these factors wrapped with greed and despite the ready cliché that legislature makes the law and judges find these considerations are by no means applicable or decisive.

If justice is equality of rights, then political justice is equality of political rights. The sphere of these political rights encompasses the State with its government and laws regulating the affairs of the community. Men's political rights are the rights that they have in relation to such regulation. The problem of political justice, then, is to determine how this regulation can be moderated by the equal rights of all men. One of the advantages of dealing with justice within the political context is that it can help avoid the utopianism which so often dodges the discussion of such moral concepts. For although it is largely within the political context that moral values such as justice, liberty, and equality can be achieved, this context also involves stringencies which drastically condition the relevance, the possibility and the very meaning of such values.

The principles of political justice developed in the western liberal democratic tradition have had as their aim, the equalisation of political rights to the extent permitted by this political context. These principles bear on two
interrelated matters: the process of reaching political decisions, and the results of the process. The process involves most obviously the question of who is to have political power, and here the principle is that such power must rest on the consent of the governed. The result of the process involves the question of how political power is to be used, how the governed are to be affected by it, etc. Here two principles have been established: one, that the results of the political process may not infringe certain basic rights or freedoms of each individual; the other, that the results must end to achieve, or at least must aim at achieving certain good for everyone and for the community.

3 (ii) DEMOCRATIZATION OF JUSTICE

The liberalisation of the rule of standing has resulted in enabling a large number of people belonging to the deprived and the exploited sections of humanity realise and enjoy their socio-economic, basic, human and fundamental rights. These rights become meaningful instead of remaining mere empty hopes. It is also essential for the rule of law to wean the people away from the lawless streets and win in the court of law.

Political justice is equality of political rights, and each principle of political justice presents a criterion for the achievement of such equality. Viewed from a social point of view, common goods may be distinguished into three groups, consisting in the necessary conditions for:

1) The preservation of any society,
2) The preservation of the distinctive socio-political values of a specific kind of society, and
3) Extending or advancing these values.
Thus the concept of social justice, as it is largely irrelevant to the satisfaction of personal discontent, seems to be irrelevant to a very large area of social life. Social justice is quite fundamental, however, to political discontent, for it presumably represents an ideal state of society from which the existing state is perceived as a significant divergence. It is this divergence between the existing and the ideal state of society which is perceived as the motivation for homeostatic change. Even here, however, the ideal contains a good deal more than the concept of justice. A good deal of thinking about war and peace at the moment, for instance, reflects the view that, in the present stage of military technology, it would be worthwhile paying a good deal in injustice for the establishment of a stable peace. Although war has historically been one of the ways in which men have attempted to correct what they perceive as injustices, at the present time, it may be that war has become too expensive and too dangerous as a means of moving the world toward a more just order. Similarly, there may be a conflict between the claims of social justice and the desire for economic development which may be achieved by riding roughshod over the more delicate issues of social justice. A similar competitive relationship may exist between justice and freedom. Freedom and justice are hard to measure; it does seem that one may be enlarged at the expense of the other. The institutions of justice inevitably limit much of the freedom of some, and some are affected by freedom. It may be argued that this limitation of the freedom of some is in the interests of greater freedom for all, but this conclusion is by no means necessary. It can easily interfere with peace, order, economic growth, and freedom. An obsession with “fair” shares may inhibit the growth of the total social product, may lead to costly conflict, or may severely limit the freedom of action of the individuals in the society.
The essentially subordinate status of social justice, as a goal of rational political discontent, is illustrated by the principle that any group will find it eventually unprofitable to redistribute income among itself at the cost of the smallest decline in the rate of economic development. For any group which succeeds in such a redistribution there will be some year in the future beyond which it will be worse off in an absolute sense because it effected the initial redistribution in its favour. The general conclusion seems to be that social justice is something that we ought to have but that we should not want too badly, or else our craving for it will dash it from our lips and, in our eagerness to snatch it, we shall spill it.

3 (iii) ROLE OF PUBLIC INTEREST LITIGATION IN DEVELOPMENT OF HUMAN RIGHTS JURISPRUDENCE

The concept of human rights, though generally traced to western society is neither entirely western in origin nor so modern. It is the crystallisation of values or moraise that are the common heritage of mankind. In India, values were present in as early as in the Rig Veda to the three civil liberties of Tana (body), Skridhi (dwelling house), and jibasi (life). Long before Hobbes, the Indian epic Mahabharata described the civil liberty of the individual in a political State. Ancient Indian society was a highly structured and well organized affair with the fundamental rights and duties not only of individuals but also of classes, communities and castes clearly laid down. The concept of Dharma, the supreme law which governed the sovereign and the subject alike covered the basic principles involved in the theory of rights, duties and freedoms. Long before the second century B.C., there was mention of elective kingship and the law of nature which even kings had to obey on pain of deposition. Also, kings were required to
take a pledge never to be arbitrary and always to act according to “whatever law there is and whatever is dictated by ethics and not opposed to politics.” Kautilya, the author of the political treatise, Arthashastra, not only affirmed and elaborated the civil and legal rights first formulated by Manu but also added a number of economic rights. While categorically asserting that an Arya can never be subjected to slavery, he ordains that “the king shall provide the orphan, the aged, the infirm, the afflicted and helpless with maintenance; he shall also provide subsistence to the helpless expectant mothers and also to the children they give birth to.” In the ancient period, private ownership in land was not recognized. Land could not be made a private property even by a decree of the King. Recognizing the institution of private property and the individual’s proprietary rights over various forms of wealth, the Arthashastra says that “lands could be confiscated from those who did not cultivate them and given to others.”

Fundamental human rights in the form of civil liberties with their modern attributes and overtones are, however, a development more or less parallel to the growth of constitutional government and Parliamentary institutions from the time of British rule in India. The impetus for their development obviously came out of resistance to foreign rule when the British resorted to arbitrary acts such as brutal assault on satyagrahis, internments, deportations, etc. There was no fundamental law guaranteeing the subjects rights and liberties and they were humiliated and discriminated against in many ways, in their own country. The social conditions were deplorable particularly affecting the untouchables and the women. Besides

---

140 Kautilya, Arthashastra, translated by R Shamasastry, Mysore 47 and 206(1960,6th ed.).
141 Rangaswami Aiyangar, Ancient Indian Polity 118, 1935, Madras, p.46.
there existed different religious, linguistic and ethnic groups which was encouraged and exploited by the British, the national movement borne from this exploitationand its leaders were from the very Stan committed to the ideal of inherent rights of men and securing them for all the people. The avowed objectives of several national organizations, including that of the Indian National Congress, in the beginning was to secure civil liberties and human rights of non-discrimination on grounds of race, color etc. in the matter of access to public places, offices and services. As far back as 1895, within a decade of the establishment of the Indian National Congress, the Constitution of India Bill (described as the Home Rule Bill) envisaged for India a constitution guaranteeing to every citizens certain basic human rights like freedom of expression, inviolability of one’s house, right to property, equality before law and others. In 1918, the Indian National Congress at its special session (held in Bombay) made a demand for writing the Government of India Bill (popularly referred to as the Montagu-Chelmsford Act), “a declaration of the rights of the people of India as British citizens including therein, among other things, guarantees being equality before law, protection in respect of liberty, life and property, freedom of speech and press, and rights of association.” At its session in Delhi the same year, the Congress passed a resolution claiming the recognition of India as a nation “to whom the principle of self-determination should be applied” and as a first step demanded the immediate abolition of laws, regulations and ordinances which denied basic civil liberties to the people, restricted free discussion of political questions or empowered the executive to arrest, detain, intern, extern or imprison outside the processes of ordinary civil or criminal law.

The Commonwealth of India Bill, finalized by the Indian National Congress in 1925 went a step further and under the inspiration of the Constitution of the Irish Free State of 1921, which included a list of fundamental rights,
embodied a specific “declaration of rights” visualising for every person certain fundamental rights in terms practically identical with the relevant provisions of the Irish Constitution.

The resolution passed at the Madras session of the Indian National Congress in 1927 reiterated that the basis of any future Constitution for the country must be a declaration of fundamental rights, based on the fact of the existence of minorities in India. Similarly the Motilal Nehru Committee appointed in 1928 by the All Parties Conference declared that the first concern of Indian people was to secure fundamental rights that had been denied to them. The rights recommended by the Committee were incidentally, a close precursor of the fundamental fights in the Constitution of independent India, with ten of the nineteen rights enumerated in the Nehru report appearing in the Constitution substantially unchanged such as the fight for personal liberty, freedom of conscience and of profession and practice of religion subject to public order or morality, right to free expression of opinion and to assemble peaceably and without arms, and to form associations or unions, subject to public order or morality, equality for all citizens before the law and in civil rights and equality of rights to men and women as citizens.

The Congress pledge of commitment to complete independence at the Lahore Congress under the presidency of Jawaharlal Nehru in 1930 declared the “inalienable right of the Indian people as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth”. It was clear to the leaders of the freedom movement by now that achievement of national independence was an essential pre-condition for enjoyment of any of the other basic human right and liberty.

142 For the recommendations of the Nehru Committee in fuller details see B. Shiva Rao and others, The Framing of India’s Constitution; Select Documents, Vol.1 59-75 (New Delhi, 1966).
Then came the Karachi Resolution on “Fundamental Rights and Social Change” which further clarified the goals and was divided in three parts:

1) Fundamental Rights and Duties
2) Labour, and
3) Economic and Social Programme.

The Resolution enumerated the fundamental duties along with the fundamental rights and significantly made no mention of the right to hold property. It also demanded several social and economic rights such as the right to free primary education, a living wage and healthy conditions of work for labour, protection against old age, sickness and unemployment, protection of women workers and protection against employment of children and enjoined the state to control key industries and own mineral resources. The civil and political rights were thus demanded in conjunction with positive social and economic rights of the masses declaring that “in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions”.

The emphasis on rights placed by the freedom movement all along did lead to the inclusion of certain rights and forms of protection in the Government of India Act, 1935. The provisions provided in each case, with certain exceptions, that no person shall be disqualified on ground of sex from holding any civilian office under the Crown and that no person shall be deprived of his property save by authority of law.

The idea of having enumerated fundamental rights maintained its hold in the deliberations of the “Sapru Committee” that considered these rights necessary not only as “assurances and guarantees to the minorities but also for

---

144 Sections 275 and 297-300, Government of India Act, 1935.
145 This was appointed by an All-Parties’ Conference, 1944-45.
prescribing a standard of conduct for the legislatures, governments and the courts.” The Cabinet Mission’s statement of May 16, 1946 also envisaged the setting up of an Advisory Committee on the rights of citizens, minorities and tribes and excluded areas at a preliminary meeting of the Constituent Assembly. Thus the tasks before the Constituent Assembly in this regard were clear and the Constitution was to be conceived not only as a mechanism for governing the country but as a potent instrument of social change and a code of human rights was inevitably to be among the core features of the new Constitution.146 Austin observes:

“The Constitution was to foster the achievement of many goals. Transcendent among them was that of social revolution. Through this revolution would be fulfilled the basic needs of the common man, and, it was hoped, this revolution would bring about fundamental changes in the structure of Indian society.”147

Public Interest Litigation and the Development of Human Rights Jurisprudence:

The view that predominated in the initial period after India’s independence was that it was the Parliament and the executive who were principally responsible for fulfilling the promise of human rights contained in the Constitution. “There is no dearth of metaphors confining the role of the judiciary to that of a ‘watchdog’, ‘umpire’, ‘wicket keeper’ or ‘balance wheel’. The situation does not improve by

146 Supra 5, p.27.
substituting the word ‘sentinel’ for ‘watchdog’. The political leaders emphasized it time and again. However the judiciary could not be kept away from using its powers to the fullest for long. “Judicial encounters with human rights are as varied as the anxieties of those who bring their problems to the attention of the courts.” Thus the courts have played a very important role in interpreting and reinterpreting the fundamental rights.

When human rights are guaranteed as Fundamental Rights in Constitution, the question arises whether enumeration thereof in the Constitution is exhaustive or beyond such enumeration there are some other rights to meet the growing needs of civilization or the changes in the social background since the date of adoption of the written Constitution. In the American Constitution, the position is made explicit by stating that the enumeration of the rights in the Bill of Rights appended to the Constitution is not exhaustive. The Ninth Amendment says:

“\textit{The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.}”

Further through a process of judicial interpretation, new rights have been evolved.

As regards the Indian Constitution, initially the view was taken that Part III gives an exhaustive list of fundamental rights. However this view has been

---

149 Nehru’s retort that India’s lawyers had ‘purloined the Constitution’ was aimed at exactly this. See Nehru’s speech in Parliament on Land Reforms legislation, XII-XIII PD (nil) col 8832 (17 May, 1951): “Somehow we have found this magnificent constitution that we have framed was later kidnapped and purloined by the lawyers.”
150 Supra n. 112.
departed from by the Supreme Court subsequently, by propounding the theory of emanation, following the example of the American Supreme Court.\footnote{Maneka Gandhi v. Union of India AIR 1978 SC 597} This means that, even though a right is not specifically mentioned in Part III, it may still be regarded as a fundamental right, that is, “it emanates from a named fundamental right or its existence is necessary in order to make the exercise of a named fundamental right meaningful and effective.”\footnote{Ibid, p.640, para 77.} Thus, though there is no provision in the Indian Constitution similar to Ninth Amendment to the American Constitution, the Indian judiciary has achieved the same result as in USA.\footnote{Supra 115, p.96.}

The most fertile area for applying this theory has been provided by Article 21 of the Constitution. The Courts have first expanded the meaning of ‘life’ and ‘liberty’ contained in the Article and then by a gradual process of interpretation read many other rights into the Article as necessary for the enjoyment of right to life and liberty. At the same time, the Courts have also relied on the Directive Principles of State Policy and read many of the unenforceable Directives into the enforceable Fundamental Rights. The dichotomy made in the Constitution between the enforceable and non-enforceable human rights has been overcome through the Court’s power to issue directives\footnote{Centre for Legal Research v. State of Kelala AIR 1986 SC 2195.} under Article 32, which again is confined to the enforcement of Fundamental Rights.

In infusing dynamism into the economic, social and cultural rights, the Supreme Court has been prompted by the philosophy of social justice or social rights that are a counterpart of individual rights\footnote{Supra 115, p.35.}, as follows:\footnote{S.P. Gupta v. President of India and Ors. AIR 1982 SC 149.}

“The task of national reconstruction has brought about enormous increase in development activities and law is being utilized for the purpose of
development, social and economic. It is creating more and more a new category of rights in favour of a large section of people and imposing a new category of duties on the State ... with a view to reaching social justice to the common man. This is not to say that individual rights have ceased to have a vital place in our society but it is recognized that these rights are meaningless in today’s setting unless accompanied by the social rights necessary to make them effective and really accessible to all. The new social and economic rights which are sought to be created in pursuance of the Directive Principles of State Policy essentially require active intervention of the State. In these cases, the duty which is breached giving rise to the injury is owed by the State ... not to any specific or determinate class or group of persons, but to the general public.... Now if’ breach of such public duty were allowed to go unrepressed because there is no one who has received a specific legal injury ... the failure to perform such public duty would go unchecked. ... It would also make the new Social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual.159"

Further the Supreme Court has held that ‘social justice’ is an objective under the Preamble of the Constitution, and whatever be the precise contents of ‘social justice’, it would include recognition of the needs of the weaker sections of the community as ‘human beings’.160 Administration of justice can no longer be merely protector of legal rights but must, whenever possible, be dispenser of social justice and in doing so and overlook legal technicalities.161 In fact, the

159 Ibid, p.191,192, para.19.
160 Sadhuram v. Pulin AIR 1984 SC 1471 pr. 29,30
Supreme Court in **CES. C- Ltd v/s Subhash Chandra Bose**\(^{162}\) has held that the right to social and economic justice is a fundamental right.

In this process of enumeration of many unremunerated lights, public interest litigation has had a major role to play since many of these rights have been enunciated in Public Interest Litigations filed by public-spirited individuals. Many other cases have involved the elaboration of the rights and principles evolved by the courts in the earlier cases. Thus the Courts have greatly contributed to the development of human rights jurisprudence in the country not only by relaxing the procedural norms\(^{163}\) and evolving different techniques of providing relief but also by expanding the list of human rights.

Article 21, though couched in negative language, confers on every person the fundamental right to life and personal liberty. The two rights have been given paramount position by our Courts.\(^ {164}\) With reference to a corresponding provision in the 5\(^{th}\) and 14\(^{th}\) amendments of the US Constitution, which says that no person shall be deprived of his "life, liberty or property without the due process of law". In **Munn v/s Illinois**\(^ {165}\), Field, J. spoke of the right to life in the following words:

"By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicated with the outer world."

\(^{162}\) AIR 1992 SC 573.
\(^{163}\) Supra 144, Chapter II.
\(^{164}\) **Kehar Singh v. Union of India** AIR 1989 SC 653.
\(^{165}\) 94 US 113.
This statement was quoted with approval by the Supreme Court in a number of cases\textsuperscript{166} and has been further expanded by the statement ‘That any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21’\textsuperscript{167} Bhagwati, J. further held:

“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.”\textsuperscript{168}

Relying on the above, Bhagwati, J. held in Bandhua case\textsuperscript{169}

“It is the fundamental right of everyone in this country to live with human dignity, free from exploitation. 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 (17) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of the workers men and women, and of the tender aged children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and

\begin{flushleft}
\textsuperscript{167} Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746.
\textsuperscript{168} Ibid. p.753.
\end{flushleft}
maternity relief These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State ... has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

Thus various rights have been included in this right. The expression ‘personal liberty’ has similarly been given a very wide meaning. The expression ‘liberty’ in the 3 and 14 amendments to the US Constitution have given a very wide meaning. It encompasses all the freedoms. The expression is not confined to mere freedom from bodily restraint, and liberty’ under law but extends to the full range of conduct which the individual is free to pursue. In one of the first cases on the issue some of the judges relying on the fact that the word ‘liberty’ is qualified by ‘personal’ in the Indian Constitution concluded that personal liberty’ was confined to freedom from detention or physical restraint.

For the first time the meaning and scope of ‘personal liberty’ came up pointedly for consideration in Kharak Singh v/s State of Uttar Pradesh. The Court rejected that ‘personal liberty’ was confined to “freedom from physical restraint or freedom from confinement within the bounds of a prison” and held that “personal liberty is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the ‘personal liberties’ of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, ‘personal liberty’ in Article 21 takes in and comprises the residue.”

---

171 Supra 128
172 Supra 116
Thus this expression has also been given an expanded meaning to include a variety of rights.

At the same time, while Bhagwati, J. in Maneka Gandhi case\textsuperscript{175}, established the requirement of reasonableness (hitherto read in Articles 14 and 19) of procedure in Article 21 through Article 14, some of the judges in that case and in some other subsequent cases have read it in Article 21 itself and particularly in the word ‘law’ leading to the conversion of the expression ‘procedure established by law’ into ‘due process of law’ in the American sense which the Constitution makers had intended to avoid by replacing the latter expression with the former. Thus Chandrachud, J. said that “the procedure in Article 21 has to be fair, just and reasonable, not fanciful, oppressive or arbitrary”\textsuperscript{176} and Krishna Iyer, J. said that ‘law in Article 21 is reasonable law, not any enacted piece’.\textsuperscript{177} Later in another case, Krishna Iyer, J. said, “True our Constitution has no ‘due process’ clause... but... after Cooper... and Maneka Gandhi... the consequence is the same”\textsuperscript{178} and added that Article 21 is the counterpart of the procedural due process in the United States.\textsuperscript{179} Thus by a process of interpretation, the requirement of reasonableness has developed into a general principle of reasonableness transcending mere procedural laws, similar to due process of law in the American Constitution capable of application to any branch of law.”

\textsuperscript{175} Supra 117
\textsuperscript{176} \textit{R.C. Cooper} v. \textit{Union of India} AIR 1970 SC 564: (1970) 1 SCC 248 at 323.
\textsuperscript{177} \textit{Ibid.}, p.338.
(iv) Role of Public Interest Litigation in implementation of human rights

Public interest litigation is not adversarial in nature but is one of cooperation and coordination between the three wings of the State and it is the constitutional duty of this Court to ensure enjoyment of the fundamental rights by all citizens and in particular the poor and deprived social segments and in case of violation thereof, to prevent the same by giving appropriate directions in that behalf, in aid thereof Supreme Court has been armed with Article 142 to pass such orders as may be necessary for doing complete justice in a cause or pending matter before it. An order so made shall be enforceable throughout the Territory of India.

Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to check injustice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of Constitutional ethos which constrain any person to avail Article 142 of the Constitution of India and direct the Union of India as well as all State Governments to evolve, after in depth discussion at Ministerial level conference, such procedures and principles or programmes, as indicated in this order, as that would guide, help, rescue and rehabilitate the fallen women. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversarial litigation and in keenly contested matters of even public interest litigation in particular of recent type cases. However, in the cases, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society is responsible
for a woman’s becoming victim of circumstances. The society should make amends to prevent trafficking in woman, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice is the constitutional duty of the State. The economic empowerment and social justice along with ensuring the dignity of the person are the fundamental rights and the courts and government should positively endeavour to ensure them.

Thus considering the substratum of the judgment prepared for relating to children of the prostitutes and establishment of the juvenile homes, Supreme Court would concern with the directions being issuing in this order. Supreme Court recovered its respectful dissent on the question of prostitution and the directions proposed to be issued on that account, referring to the issued under Articles 142 and 145(5) of the Constitution.

(a) **Petition for miserable people of Kalahandi**

Through letter, petitioners have brought to the notice of the Court, the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty. It was alleged that the people of Kalahandi, in order to save themselves from deaths due to starvation were compelled to subject themselves to distress sale of labour on a large scale resulting in exploitation of landless labours by the well-to-do landlords. It was all alleged that in view of distress sale of labour and paddy, they somehow woke out their daily existence. Further, their case is that being victims of ‘chill penury’, the people of Kalahandi are sometimes forced to sell their children. It had been prayed that the State Government should be directed to take immediate steps for the purpose of ameliorating the misery of the people of the district of Kalahandi.
On receipt of the said letter, the said Court directed the same to be treated as a writ petition and it was registered as such.

Another writ petition being Writ Petition (Civil) No. 1081 of 1987 had been filed by the Indian People’s Front. This writ petition not only related to the misery of the people of Kalahandi, but also of the people of another district, namely the district of Koraput. In this writ petition, it had been alleged that the starvation deaths of the inhabitants of the district of Koraput and Kalahandi are due to utter negligence and callousness of the administration and the Government of Orissa. It is alleged that the starvation death, drought, diseases and famine have been the continuing phenomena in the said two districts since 1985. The Government of Orissa had been accused of utter failure to protect the lives of the people of the two districts.

The State of Orissa appeared in both these writ petitions same by filing counter-affidavits denying the allegations of the petitioners filed two statements, one dated October 20, 1986 pages and the other dated December 1, 1986 consisting of 181 statements alleging that the State of Orissa had implemented the social welfare measures in the district of Kalahandi.

In order to ascertain the correct state of affairs, Court by its order dated January 16, 1987 requested the District Judge of Kalahandi to enquire as to whether the State Government has, in fact, implemented the social welfare measures in the district of Kalahandi and whether such measures were adequate to meet the needs of the people there. The learned District Judge was asked to submit a report to this Court. It was further directed by this Court that the District Judge, while preparing his report, would consider the feasibility of the implementation of some suggestions made by the petitioners regarding the steps to be taken for the purpose of ameliorating the condition of the people in the said district.
In the given circumstances, Supreme Court directed the Government of Orissa that it would within a period of one month from the said date, nominate the names of at least five persons belonging to the recognized voluntary organizations like Sarvodaya Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies as members of the said Natural Calamities Committee of the District. Supreme Court had also accepted the suggestion of Shri Patnaik that the Committee shall hold at least one meeting every two months. Moreover, the function of the Committee would not be confined only to the cases of starvation deaths, but it would also be responsible for looking after the welfare of the people of the district.

The measures which had been taken and are being taken, as stated in written statement not submitted by the Advocate General, have been briefly mentioned. There was no reason before the court to not accept the statements made on behalf of the State of Orissa that the measures, are being taken for the purpose of mitigating hunger, poverty, starvation deaths, etc. of the people of Kalahandi. If such measures are taken, there can be no doubt that it will alleviate to a great extent, the miseries of the people of Kalahandi. Such measures are also being taken in respect of the district of Koraput. The National Calamities Committee shall also keep a watch over the working of the social welfare measures which are being taken and may be taken in future. Shri Patnaik also did not dispute that if such measures are continued to be taken, it would be a great relief to the people of Kalahandi and Koraput. Supreme Court hoped and trusted that in view of the prompt action that has been taken by the Government, soon all the miseries of the people of these two districts would be over.
(b) **Right to food-Starvation Death State to provide free food**

In a significant judgment in *PUCL v/s Union of India*\(^{180}\), the Supreme Court has held that the people who are starving because of their inability to purchase food grains have right to get food under Art. 2 and therefore they ought to be provided the same free of cost by the States out of surplus stock lying with the States particularly when it is unused and is rotting. The Court held that under such a situation food grains be provided to all those who are *aged, infirm, disabled, destitute women, destitute men, pregnant and lactating women and destitute children*. Accordingly the Court directed the States to make surplus food grains lying in go downs available to all of them immediately through PDS shops to avoid starvation and mal-nourishment.

**Writ Jurisdiction under Articles 32 and 226 of the Constitution of India, 1950.**

The Writ Jurisdiction of Supreme Court can be invoked under Article 32 of the Constitution for the violation of fundamental rights guaranteed under Part – III of the Constitution. Any provision in any Constitution for fundamental rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions. Since the reality of such rights is tested only through the judiciary, the safeguards assume even more importance. In addition, enforcement also depends upon the degree of independence of the Judiciary and the availability of relevant instruments with the executive authority. Constitution of India, like most of Western Constitutions, lays down certain provisions to ensure the enforcement of fundamental rights. These are as under:

(a) The Fundamental Rights provided in the Indian Constitution are guaranteed against any executive or legislative actions. Any executive or legislative action,

\(^{180}\) AIR 1982 SC 1473.
which infringes upon the fundamental rights of any person or any group of persons, can be declared as void by the Courts under Article 13 of the Constitution.

(b) In addition, the Judiciary has the power to issue the prerogative writs. These are the extra-ordinary remedies provided to the citizens to get their rights enforced against any authority in the State. These writs are:

1. Habeas corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo-warranto.

Both, High Courts as well as the Supreme Court may issue the writs.

(c) The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, except during the period of emergency, as laid down in Article 359 of the Constitution. A fundamental right may also be enforced by way of normal legal procedures including a declaratory suit or by way of defence to legal proceedings.

However, Article 32 is referred to as the "Constitutional Remedy" for enforcement of fundamental rights. This provision itself has been included in the fundamental rights and hence it cannot be denied to any person.

Dr. B.R.Ambedkar described Article 32 as the most important one, without which the Constitution would be reduced to nullity. It is also referred to as the heart and soul of the Constitution. By including Article 32 in the fundamental rights, the Supreme Court has been made the protector and guarantor
of these rights. An application made under Article 32 of the Constitution before the Supreme Court, cannot be refused on technical grounds. In addition to the prescribed five types of writs, the Supreme Court may pass any other appropriate order. Moreover, only the questions pertaining to the fundamental rights can be determined in proceedings against Article 32. Under Article 32, the Supreme Court may issue any of these writs against any person or government within the territory of India. Where the infringement of a Fundamental Right has been established, the Supreme Court cannot refuse relief on the ground that the aggrieved person may have remedy before some other court or under the ordinary law.

The relief can also not be denied on the ground that the disputed facts have to be investigated or some evidence has to be collected. Even if an aggrieved person has not asked for a particular writ, the Supreme Court, after considering the facts and circumstances, may grant the appropriate writ and may even modify it to suit the exigencies of the case. Normally, only the aggrieved person is allowed to move the Court. But it has been held by the Supreme Court that in social or public interest matters, any one may move the Court. A Public Interest Litigation can be filed before the Supreme Court under Article 32 of the Constitution or before the High Court of a State under Article 226 of the Constitution under their respective Writ Jurisdictions. There are mainly five types of Writs –

(i) Writ of Habeaus Corpus,
(j) Writ of Mandamus,
(k) Writ of Quo-Warranto,
(l) Writ of Prohibition, and
(m) Writ of Certiorari
(I) **Writ of Habeas Corpus:**

It is the most valuable writ for personal liberty. Habeas Corpus means, "*Let us have the body.*" A person, when arrested, can move the court for the issuance of habeas corpus. It is an order by a court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release.

(II) **The Writ of Mandamus:**

Mandamus is a Latin word, which means "*We Command*". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.

(III) **The Writ of Quo-Warranto:**

The word Quo-Warranto literally means "*by what warrants?*" It is a writ issued with a view of restraining a person from acting in a public office of which he does have the jurisdiction. The writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has
been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a Writ of quo-warranto against the person and declare the office vacant.

(IV) **The Writ of Prohibition:**

Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. This Writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. It is a writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issuance of this writ, proceedings in the lower court come to a stop. The writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, prohibiting the latter to continue proceedings in a particular case, where it has no legal jurisdiction of trial. While the writ of mandamus commands doing of particular thing, the writ of prohibition is essentially addressed to a subordinate court commanding inactivity. Writ of prohibition is, thus, not available against a public officer not vested with judicial or quasi-judicial powers. The Supreme Court can issue this writ only where a fundamental right is affected.

(V) **The Writ of Certiorari:**

Literally, Certiorari means to be certified. The Writ of Certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration. The Writ of Certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. In other words, while the prohibition is available at the
earlier stage, Certiorari is available on similar grounds at a later stage. It can also be said that the Writ of prohibition is available during the pendency of proceedings before a sub-ordinate court, Certiorari can be resorted to only after the order or decision has been announced. There are several conditions necessary for the issue of Writ of Certiorari, which are as under:

(a) There should be a court, tribunal or an officer having legal authority to determine the question of deciding fundamental rights with a duty to act judicially.

(b) Such a court, tribunal or officer must have passed order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law. The order could also be against the principle of natural justice or it could contain an error of judgment in appreciating the facts of the case.

Subjects of Public Interest Litigation

Public Interest Litigation is meant for enforcement of fundamental and other legal rights of the people who are poor, weak, ignorant of legal redressal system or otherwise in a disadvantageous position, due to their social or economic background. Such litigation can be initiated only for redressal of a public injury, enforcement of a public duty or vindicating interest of public nature. It is necessary that the petition is not filed for personal gain or private motive or for
other extraneous consideration and is filed bona fide in public interest. The following are the subjects which may be litigated under the head of Public Interest Litigation:

(I) The matters of public interest: Generally they include
(i) bonded labour matters
(ii) matters of neglected children
(iii) exploitation of casual labourers and non-payment of wages to them (except in individual cases)
(iv) matters of harassment or torture of persons belonging to Scheduled Castes, Scheduled Tribes and Economically Backward Classes, either by co-villagers or by police
(v) matters relating to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forests and wild life,
(vi) petitions from riot victims and
(vii) other matters of public importance.

(II) The matters of private nature: They include:
i) threat to or harassment of the petitioner by private persons,
ii) seeking enquiry by an agency other than local police,
iii) seeking police protection,
iv) land lord tenant dispute
v) service matters,
vi) admission to medical or engineering colleges,
vii) early hearing of matters pending in High Court and subordinate courts and are not considered matters of public interest.
(IV) **Letter Petitions**: Petitions received by post even though not in public interest can be treated as writ petitions if so directed by the Hon’ble Judge nominated for this purpose. Individual petitions complaining harassment or torture or death in jail or by police, complaints of atrocities on women such as harassment for dowry, bride burning, rape, murder and kidnapping, complaints relating to family pensions and complaints of refusal by police to register the case can be registered as writ petitions, if so approved by the concerned Hon’ble Judge. If deemed expedient, a report from the concerned authority is called before placing the matter before the Hon’ble Judge for directions. If so directed by the Hon’ble Judge, the letter is registered as a writ petition and is thereafter listed before the Court for hearing.