6. (i) INTRODUCTION

The first and foremost factor that has contributed greatly to the cause of PIL in India is the awareness explosion among the general folk. The common man now a day is far better informed about their right and expectations that they were in the earlier period. Widespread Media coverage, which is the hallmark of the modern era and which has not left any corner of the society and lives of the people unfathomed has caused a hood of awareness led litigation’s in the Courts. The world wide human rights movement has cast an impact on the Indian scenario too which has become the most prolific area of Public Interest Litigation in India. In this direction the impact of the arbitrary and unjustified imposition of emergency had a great role to play as during this nightmarish eighteen months the deprivation of even the basic human rights was total and complete, which accelerated the process of budding of the domestic consciousness among the people.

The most novel factor which hit the Indians India marched slowly on to the treacherous path of development of public right (PR), was the proliferation of various socially oriented groups and democratic organizations and its increasing acceptance by the people ‘in their role of Pincers and Catalysts of the Public Interest Litigation movement in India. Now their inviolability to provide representation to the disadvantaged sections of the society is beyond doubt. Let us take a few illustrations, the People’s Union for Domestic rights (P.U.D.R.) and various Trade Unions and also certain religious groups are prominent in the active development of private rights. Beside these groups, various lawyers groups especially certain young lawyers groups have made huge impact. Further most of the non-lawyers organisations too had advocates as it members which went a long way in establishing people’s faith in them, as they began affecting these
institution straight away with this grimness to seek redresses.

Rule of Law is an integral part of a democratic society, where citizen’s rights are taken care of by an independent and impartial judiciary. Thus in every democratic society citizen’s access to justice is the hallmark of society itself and any encroachment on that right mars the spirit of a democratic system of government. However in the recent years the whole adjudicatory system had become prey to dilatory and expensive process which takes a heavy toll on the poor citizen’s right of easy access to justice. In the recent era, there has been a tremendous upsurge in the government’s power and responsibilities mainly because the Indian state is a welfare state which entails a host of executive interferences in various walks of human life and which leaves no corner of an individual’s life untouched. Due to these unprecedented changes in socio-economic and political aspects of the governance of the country, the judiciary too has kept pace with it and has assumed several new responsibilities and jurisdictional duties so far unheard of. The realisation by the Judiciary of this new development executive’s increasing interference in the daily lives of people and ever increasing circumscription of people’s access to justice has led them to adopt less formal procedures and circumvent the nuances of technicalities of the litigation processes. The most significant of them was the liberalization of the doctrine of *locus standi*.

Apart from the above mentioned factor of facilitating easy access to poor and unorganized, another factor which activated the PIL movement in India was the newly found dynamism in the judiciary, which had lost much of its credibility during the emergency era. Guided by above-mentioned factor the judiciary responded gallantly by assuming the charge of espousing the cause of downtrodden and under privileged by Public Interest Litigation.
The wave of professional uprightness and realisation of responsibility towards society did not leave even the Bar, which had gained much notoriety over the years due to its highly materialistic approach and unscrupulous ways. The lawyer’s manipulative ways and craftsman ship are central to a meaningful utilization of legislative, administrative, political and judicial processes.

In last few years, the Supreme Court as well as the High Courts are witnessing the increased flow of Public Interest Litigation such as the blinding of the under trials in jails275, the torture of prisoners in Jails276, the plight of rickshaw pullers277, pavement dwellers right to live on pavements278, rights of undertrials in jails279, right to human dignity of inmates of Agra Home280, Asiad Labours Case281, trafficking in Women282, Bonded labour’s rights283, environmental pollution by Tanneries in Kanpur284, stone querying in Doon region285, pollution of the Ganga286, effect on Taj Mahal by the pollution caused by Marhura Refinery and several other Industrial Units, mini factory in Calcutta287 and so on. After a closer look at these cases, they lead one to be convinced that the judiciary just could not ignore these issues and had to take up the matter at once as it was left option less on account of executive’s incompetence as well as their unwillingness or more appropriately by the total absence of political will on the part of the

276 Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579.
281 People’s Union for Democratic rights (P.U.D.R.) v. UOI, AIR 1982 SC 1473.
285 Doon Valley Stone queries Case.
286 M.C. Mehta v. UOI
Government.

It was the concerted efforts of various sections of the society including lawyers, press intellectuals (both legal as well as general), certain inmates of protective home and prisons, public spirited citizens, various legal aid movements that led PIL movement to establish its roots in India.

6. (ii) THE EVOLUTION GROWTH OF PIL IN INDIA

After a brief outline of the seeds of growth of the Public Interest Law in India, a brief Chronological glance through the cases and judgments which have laid the foundation of PIL in India is called for.

Perhaps the concept of PIL was initiated in India by Krishna Iyer J. in Mumbai Kamgar Sabha v/s Abdulbhat where he had observed:

“Test litigants, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issue on the merits by suspecting reliance on peripheral procedural shortcomings. Public Interest is promoted by a spacious construction of locus standi in our socio economic circumstances and conceptual latitudinarianism that permits taking liberties with individualization of the right to invoke the highest courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of objective law”

288 Ibid.
The right of approaching the court was granted to an association of workers as such, on behalf of individual workers for the claim of some bonus. The concept was further developed by him and Chandrachud C.J. in *Fertilizer Corporation Kamgar Union v/s Unions of India*. This case also uses the term “Public Interest Litigation”. Krishna Iyer J. was the first Judge to use the expression ‘Epistolary’ Jurisdiction, which was later given a more comprehensive meaning by Bhagwati J. in *S.P.Gupta’s case* in which he had defined the scope of PIL in vivid details.

However before we come to *S.P.Gupta’s case* it would be preferable to have a quick look to *Sunil Batra’s case*.

In *Sunil Batra II v/s Delhi Administration*, Supreme Court referred to Public Interest Litigation in a very forceful language. Where it said that Public Right is concerned not with the rights of one individual but the interests of a class or group of person who are either the victims of exploitation or oppression or/and denied their constitutional or legal rights and who was not in a position to approach the courts for redressal of their grievances. It seeks to help the victims of governmental lawlessness or repression. This new concept has now confirmed that the Supreme Court of India is not a distant abstraction omnipotent in books but an activist Institution which is a cynosure of public hope.

Close on the heels of Sunil Batra came another landmark in the way of Public Interest Litigation movement in case of *Municipal Corporation Ratlam*

---


291 AIR 1982 S.C. 149 at P. 189

292 1978 AIR 1675, 1979 SCR (1) 392
where it was laid down that the court is not bound by the restraints of traditional English writs or ‘thinker rule of standing of British Indian vintage’ but can innovate and liberalize procedural jurisprudence in constitutional litigation for the purpose of remedying environmental lawlessness, lapses and excesses through law enforcement. As a strategy to solve problem of access to justice, the court can shift from “traditional individualism” of Locus Standi to the community orientation of Public Interest Litigation.

A unique illustration of Courts’ newly found activism was provided by a case of Gujrat High Court where M.P. Thakkar J. took up a case *suo moto* on the basis of a letter published in The Times of India dated 25th September, 1979, (Ahmadabad) written by a Kerala women, Mrs. P.K. Kartiani, complaining the inaction of provident fund authorities in not paying her provident fund left by her husband. The judge treated the letter to the editor as the petition which ended up in a prompt payment of the entire dues to the women who was totally ignorant of what was being done for her in the Gujarat High Court.

In 1980, another case in which Public Right virtually for the first time came into forefront was *Husainara Khatoon’s case* which started with an article written by K. F. Rustamji (Member of the Public Commission) in the Indian Express where he pointed out how the under trial prisoners were languishing in jails in Bihar for years without trial. On reading them, Kapila Hingorans, an advocate, filed a petition and activated the Supreme Court to protect the personal liberty of the under trials.

The real break came in the course of the movement in the *S.P.Gupta v/s Vardhi Chand* where it was laid down that the court is not bound by the restraints of traditional English writs or ‘thinker rule of standing of British Indian vintage’ but can innovate and liberalize procedural jurisprudence in constitutional litigation for the purpose of remedying environmental lawlessness, lapses and excesses through law enforcement. As a strategy to solve problem of access to justice, the court can shift from “traditional individualism” of Locus Standi to the community orientation of Public Interest Litigation.

---

293 1980 AIR 1622, 1981 SCR (1) 97
President of India better known as Judges Transfer Case. With P.N. Bhagwati conceptualisation of the labelised rule of *locus standi*, the Public Right as a technique and tool for the redressal of injustices to the poor, the exploited and the deprived, seems to have been firmly established and institutionalized in the Indian legal system. In this case Bhagwati J. has formulated the principle of Public Right in the following words:

“What a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without any authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or any determinate class of person is by reason of poverty, helplessness or disability or social and economical disadvantageous position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction or order.”

The Court observed further, “Where the weaker sections of the community are concerned such as under trial prisons languishing in jails without trial, inmates of protective home in Agra or Harijan engaged in road construction in Ajmer District, who are living in poverty and destitution who are barely asking ‘out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this court will not insist on a regular writ petition to be field by the public spirited individuals espousing their cause and seeking relief for them. This court will readily respond “even to a letter addressed by such individual acting pro bono public.”

---

296 Supra Note 19, Chapter III.
In another case Bhagwati J. has observed\textsuperscript{297}

“The court is moved for this purpose by member of public by addressing a letter drawing the attention of the court to a legal injury or legal worry. The court would cast aside all technical rules of procedures and entertain the letter as a writ petition on the judicial side and take action upon it. However in the case of \textbf{Tuglakabad Jhuggi Jhopri Welfare Association v/s Union of India}\textsuperscript{298} the Delhi High Court held that Jhuggi Jhopri raised along Railway lines near railway station were unauthorized and the relief prayed for alternative accommodation on removal of the said Jhuggi Jhoppis could not be granted. Thus the evolutionary process of Public Interest Litigation in India has more or less centered essentially around court actions to liberalise the rule of locus standi so as to have the grievances placed before the court and look forward for the positive gesture from the court. Developments of Public Interest Litigation, in India has thus evidently been different from that in U.S.A. in certain respects. Where in the last decade the Public Interest Litigation movement has reached its lowest ebb in U.S.A. the effect has been quite the opposite in the case of India.

The nature of Public Interest litigation in a legal system is to a large extent shaped by the typical social, political, legal and economic development of that particular legal system. In spite of social, political, economic and geographical differences there are certain general characteristics of Public Interest Litigation which are common to almost all the legal system of the world. At the outset one can point out towards public right. It does not arise out of disputes between private practices about private rights. But the target of public rights is the enforcement of the statutory policies.

\textsuperscript{297} \textbf{People's Union for Democratic Rights} v. \textbf{Union of India} AIR 1982 S.C. 1479 at 1443.  
\textsuperscript{298} Delhi 370, 1996
Secondly, the common feature is the parties who shape the scope of the lawsuit.

Thirdly, the predictive and not historical nature of the lawsuits is common to most of legal system.

Fourthly, the party structure which is not strictly bilateral but mixed in multilateral or at the best in a liquid state with changing shape, is a common feature of legal system. The dynamic judges are the destructive feature of Public Interest Litigation. Finally the major thrust behind the growth of Public Interest Litigation movements is provided by unprecedented liberalisation of the rule of *locus standi* apart from the fact that lot of research work as well as ‘negotiations for the citizens awareness and media roles are the other hallmark of Public Interest Litigation.

Apart from common feature the Indian variant of Public Interest Litigation has its own distinguishing features. According to Justice Despande\(^{299}\), Public Interest Litigation is a strategy to bring about a silent and peaceful revolution in enlarging the socio economic equality without harming the principles of meritocracy.\(^{300}\) It is a new course in constitutional litigation to uphold such egalitarian economic rights of the people even though they may not even be either expressly written or enforceable in the constitution.\(^{301}\)

P.N. Bhagwati, Ex. C.J. of Indian Supreme Court, views “Public Interest Litigation as a strategic arm of legal allotment as it attempts to deliver justice to the poor down trodden masses who cannot get access to court of law due to their poverty conditions and other disabilities form which they suffer.”\(^{302}\)

Prof. Upendra Baxi prefers to call it Social Action Litigation (SAL) since in India it is primarily concerned with challenging state reprecussion and


\(^{301}\) Ibid.

\(^{302}\) Per the then Justice P.N. Bhagwati in *P.U.D.R.v. U.O.I.* Supra 10, p. 1476.
governmental lawlessness, where as in United States it protects civil participation in governmental decisions. He views Public Interest Litigation as the outcome of judicial populism.\(^{303}\)

A striking feature of Social Action Litigation is that it is primarily judge led even judge induced and it is in turn related to justice and judicial activism of the High Bench.\(^{304}\) The Supreme Court of India is at last becoming, the Supreme Court for the common masses of India. For too long the Apex Court had become “an area of legal quibbling for men with long purses”.\(^{305}\) Now increasingly the court is being identified by justices as well as peoples as the last resort for the oppressed arid the bewildered.\(^{306}\) Post emergency phenomenon, the transformation is characterized chiefly by judicial populism.\(^ {307}\) Prof. Baxi argues further and prefers the title “Social Interest Litigation” to the traditional Public Interest Litigation because though the label can be borrowed but not the History.

Nature and scope of public right in India has thus evidently been different from that in U.S.A. in certain respects. Still; I cannot appreciate the difference to how calling it social Action litigation (SAL) unseated of PIL as Prop. Upendra that arises by calling PIL as SAL as done by Prof. Upendra Baxi and even by Justice Bhagwati makes any essential difference in the basic concept and philosophy of Public Interest Litigation.

All the developed legal systems in the world had to face the dilemma of reconciling two conflicting claims that inevitably surfaces with respect to Public Interest Litigations i.e. the need of encouraging individual citizens to participate

\(^{306}\) State of Rajasthan v. Union of India (1979) 3 SCC 634 at 670 (Per Justice Goswami)
actively in the enforcement of law and the need to discourage the professional litigants and to invoke the jurisdiction of the courts in matters that do not concern them.

In India too the public interest litigation involved a battle of nerves between the individualism and Laissez faire, on the one hand and social concept of the law, economy and State’s role on the other hand. The ultimate end product was a stark departure of the outdated conventional rules of technicalities such as bipolar party system, adversarial nature of litigation and the equally troublesome doctrine of Locus Standi.

Public Interest Litigation is working as an important instrument of social change. It is working for the welfare of every section of society. It is the sword of every one used only for attaining justice. The innovation of this legitimate instrument proved beneficial for a developing country like India. Public Interest Litigation has been used as a strategy to combat the atrocities prevailing in society. It is an institutional initiative towards the welfare of the needy class of the society.

When considering some of the important cases, the following could be considered as landmark judgment in area of Public Interest Litigation.

The Supreme Court accepted the locus standi of an advocate to maintain the writ petition and in a series of cases Hussainara Khatoon (I)\textsuperscript{308} to Hussainara Khatoon (VI) v/s State of Bihar\textsuperscript{309}. The court issued many meaningful directions and inter alia held that speedy trial was an integral and an

\textsuperscript{308}1979 AIR 1369.

\textsuperscript{309}1995 SCC (5) 326
essential part of “right to life and liberty” contained in Article 21 of the Constitution.

In *Nilabati Bahera v/s State of Orissa*\(^{310}\) on a Public Interest Litigation filed, court evolved the public law doctrine of compensation for violation of human rights according to which liability of the state for violation of human rights is absolute and admits no exception such as sovereign immunity.

In *M.C. Mehta v/s Union of India*\(^{311}\) the petitioner prayed for directions for giving wide publicity to the messages and directions issued by the Court from time to time to protect the environment and ecology on environmental protection.

In *Bandhua Mukti Morcha v/s Union of India*\(^{312}\), Supreme Court ordered for the release of bonded labourers. Public Interest actions focusing on the plight of bonded labourers has to a certain extent helped in the implementation of ‘The Bonded Labour System (Abolition) Act, 1976’.

In a landmark judgment of *Delhi Domestic Working Women’s Forum v/s Union of India*,\(^ {313}\) Supreme Court issued guidelines for rehabilitation and compensation to the victims of rape especially working women.

**RESPONSE OF GOVERNMENT**

In some cases the response of government has been positive to the initiative taken by the judiciary in various public interest litigations. For example, government has complied with the Court orders in *Sunil Batra v/s Delhi Administratation*\(^ {314}\),

---

\(^{310}\) 1993 AIR 1960, 1993 SCR (2) 581
\(^{311}\) [1987] 4 S.C.C. 463
\(^{313}\) 1995 1 SCC 14
\(^{314}\) (1978) 4 SCC 409
M.C. Mehta v/s Union of India,\textsuperscript{315} Bandhua Mukti Morcha v/s Union of India\textsuperscript{316}.

In fact guidelines issued in D.K. Basu v/s State of West Bengal\textsuperscript{317} have been incorporated in Criminal Procedure Amendment Act. While in criminal procedure response of government has left a lot to be desired.

It has often been said that public interest litigation is a collaboratively effort on the part of the petitioner, the court and the government or the public official to see that basic human right become meaningful for large masses of people.

It merely seeks to draw the attention of the authorities to their constitutional and legal obligations and to enforce them so that the rule of law does not remain confined in its beneficent effects to a fortunate few, but extends to all, irrespective of their power, position or wealth.

This approach has considerably diluted opposition to the public interest litigation and the Government of India has also come to accept it as an essential part of the judicial process.

6 (iii) ENUMERATION OF SPECIFIC RIGHTS

While generally the development of the human rights jurisprudence has been through the interpretation of Article 21 and public interest litigation has greatly facilitated this process but at times some of the rights may have been pronounced in matters which were not strictly speaking public interest litigation’s. Yet they

\textsuperscript{315} AIR1996SC2231, (1996) 4 SCC 750.
\textsuperscript{316} Supra 217.
\textsuperscript{317} 1996(9) SCALE
were based on the principles evolved as a part of growth of public interest litigation or have been followed subsequently in other public interest litigation’s. Hence either can be read in isolation and have to be read as forming part of the same process i.e. enlarging the scope of the rights of the human beings and making them more meaningful. The rights that have emerged through a process of judicial interpretation may be classified under the following heads:

**Rights of Prisoners**

The level of barbarism in respect of a nation’s treatment of its prisoners is perhaps uniform throughout the world. Developed and developing countries treat their convicts alike with a kind of depravity which speaks volumes for the nature of contemporary civilisation and their attitudes towards a human person.\(^{318}\)

Article 10 of the Covenant on Civil and Political Rights under Para (1) lays down that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. But in the Indian Constitution there is no such provision in Part III which can safeguard the discretionary and sometimes brutal treatment given to the prisoners. However, the decision in **Maneka’s case**\(^ {319}\) and the principles evolved therein has had a major impact on the development of jurisprudence of prisoners’ rights. Thus the Supreme Court in **Charles Sobhraj**\(^ {320}\) recognized that the right to life is more than mere animal existence or vegetable substance. Even in prison a person is required to be treated with dignity and one enjoys all the rights specified in Articles 19 and 21. In this case the petitioner had contended that barbaric and inhuman treatment was hurled at him and intentional discrimination was done with him. The Court

---


\(^{319}\) Supra 117.

\(^{320}\) **Charles Shobraj v. Superintendent, Central Jail, Tihar, New Delhi** AIR 1978 SC 514.
restricted such treatment and regarded it as a violation of the right to life guaranteed under Article 21 of the Constitution. A prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. Therefore, any imposition of a major punishment within the prison system is conditional upon the observance of the procedural safeguards enshrined in Article 21, even though he is not in a position to enjoy the full panoply of fundamental rights due to the very nature of the regime to which he is lawfully committed.

In Sunil Batra case\(^{321}\) in order to secure humane treatment to the prisoners, the court set out the guidelines to be followed including the preparation of a Prisoner’s Handbook and its circulation among the inmates to bring about awareness; the State was directed to take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community, contact and correctional strategies and held that the prisoner’s rights shall be protected by the court through its writ jurisdiction and the contempt power. This was required to be backed up by free legal services.

Following this in Francis Coralie case\(^{322}\), the Court again observed that even a convict is entitled to the precious rights guaranteed by Article 21 of the Constitution and he shall not be deprived of his life or personal liberty except according to the procedure established by law. Although the prisoner or the detainee cannot freely move about by going outside the prison walls nor can he socialize at his free will with persons outside the jail, but, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation curtailing his right to have interviews with the

\(^{321}\) Sunil Batra v. Delhi Administration (No.2) AIR 1980 SC 1579.

\(^{322}\) Supra 131.
members of the family and friends can be upheld as constitutionally void under Articles 14 and 21 of the Constitution unless it is reasonable, fair and just to do so.\textsuperscript{323} Bhagwati, J. held that the detenu must be permitted to have at least two interviews in a week with relatives and friends and further that interview with the legal adviser of his choice is also a right of the detenu.\textsuperscript{324}

In \textit{Joginder Kumar case},\textsuperscript{325} the Supreme Court has furthered the rights of the prisoners holding that an arrested person is entitled, if requests so, can have one friend, relation or other person who is likely to take interest in his welfare, be aware as far as practicable that he has been arrested and where he is being detained. The Police officer is to inform the arrested person of this right and an entry shall be required to be made in the diary as to who was informed of the arrest. Further the Court has placed a duty on the Magistrate before whom the arrested person is produced to satisfy himself that these requirements have been complied with.

An endemic problem that has continued since long has been the brutal torture of persons arrested, including those arrested for petty crimes. The court has duly taken note of this. In \textit{Bandhua Mukti Morcha case},\textsuperscript{326} the Supreme Court had held that the right to life guaranteed by Article 21 includes the right to live with human dignity, free from any exploitation, any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. India has only recently signed the UN Convention on Torture though only time will tell when it will be implemented. However the Court has issued

\textsuperscript{323} \textit{Ibid}, p.753.
\textsuperscript{324} \textit{Ibid}, pp.754, 755.
\textsuperscript{325} \textit{Joginder Kumar v. State of Uttar Pradesh} AIR 1994 SC 1349.
\textsuperscript{326} Supra 54.
elaborate directions taking note of custodial violence and deaths which have been occurring with an increasing frequency. In **D.K. Basu case** the Court held that custodial violence, including torture and death in the lock-ups strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. ‘Custodial torture’ is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. The precious right guaranteed by Article 21 cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. The court emphasized that a balanced approach is needed to meet the ends of justice so that the rights of the prisoners are protected as also the interests of the society. The court insisted that to check the abuse of police power, transparency of action and accountability is two possible safeguards. Thus the court issued detailed guidelines to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures including the requirement of easy identification of the police personnel carrying out the arrest; handling interrogation; recording of their particulars in a register; preparation of a memo of arrest to be attested by at least one witness; letting a friend or relative know about the arrest; making the arrested person aware of his right, medical examination of the arrestee, allowing the arrestee to meet his lawyer during interrogation; provision for a police control room at all district and State headquarters which would display information about the arrest. The Court also directed that these guidelines be given adequate publicity. These guidelines are far-reaching and address very fundamental issues affecting the rights of the prisoners. But they have been followed more in breach than in practice. The courts have also advocated prison reforms in a number of

---

judgments. Accordingly, in **Rama Murthy case**\(^{328}\) the court taking into account the problems affecting the prison system\(^{329}\) advocated that release of bail/parole/remission, recourse to alternatives to incarceration such as fine, civil imprisonment and probation should be considered. As regards torture and ill-treatment, the court was of the view that a new Prison Act should be enacted and a new model All India Jail Manual should be framed.

The Court has also restricted the punishment of solitary confinement and recognized the putting of the prisoners in bar-fetters for an unusually long period only in those cases where ‘absolute necessity’ demanded it. In **Sunil Batra case**\(^{330}\) the solitary confinement of a prisoner, who was awarded the capital sentence for having committed the offence of murder under Section 30(2) of the Prisons Act, 1894, was held bad as it was imposed not as a consequence of the violation of the prison discipline but on the ground that the prisoner was under sentence of death. Desai, J. pointed out that the conviction of a person for a crime did not reduce him to a non-person vulnerable to major punishment imposed by the jail authorities without observance of procedural safeguards. It was also held that bar-fetters, to a very considerable extent, imposed under Section 56 of the Prisons Act, 1894, curtail, if not wholly deprive, locomotion which is one of the facets of personal liberty and such action can only be justified in the circumstances relatable to the character of the prisoner and his safe custody.\(^ {331}\)

However, prisoners have no fundamental right to escape from lawful custody and the presence of armed police guards causes no interference with the right to personal liberty. So, also the prisoners cannot complain of the installation of the

---


\(^{329}\) The court identified nine major problems: overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open-air prisons.


live wire mechanism with which they are likely to come in contact only if they attempt to escape from the prison.\textsuperscript{332} Also, the denial of amenities or their maintenance does not necessarily constitute an encroachment on the right to personal liberty. If a prisoner demands that he should have better companions in jail or should be removed to a ward with more relaxation and resents keeping convict cooks or having wardens as jail mates in his cell, such requests may justifiably be turned down in view of the prisoner’s record and potential.\textsuperscript{333} On the other hand the court has recognized the right of a convict to send a book written by him during detention for publication.\textsuperscript{334}

The Supreme Court has also held that handcuffing is prima facie inhuman and has laid down elaborate guidelines in this regard. In Sunil Batra case\textsuperscript{335} the Court laid down the preconditions for handcuffing and said bar fetters are permissible only when there being the absolute necessity for fetters, special reasons need to be given as to why no alternative measures but fetters alone will secure custodial assurance along with recording of these reasons, compliance with natural justice at least in its minimal form and removal of fetters at the earliest opportunity. These have been expanded by the Court in \textbf{Prem Shankar Shukla case}\textsuperscript{336} where the court laid rules against handcuffing of under trials without adequate reasons in writing and doing away with the distinction between classes of cases. The only circumstance which validates incapacitation by irons is that there is no other reasonable way of preventing his escape, in the given circumstances. Thus handcuffs are to be the last refuge, not the routine regimen. In such cases where handcuffs are to be put on prisoners, the authority must

\textsuperscript{333} Supra 146.  
\textsuperscript{334} State of Maharashtra \textit{v.} Prabhakar Pandurang Sanzgiri AIR 1966 SC 424.  
\textsuperscript{335} Supra 156.  
\textsuperscript{336} \textbf{Prem Shankar Shukla} \textit{v.} Delhi Administration (1980) 3 SSC 526: AIR 1980 SC 1535.
contemporaneously record the reasons for doing so. The court said that even the orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders. The Court mandated the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other irons. These principles have been applied by the court in subsequent cases while in another case, the Court directed the Union of India to issue appropriate guidelines in this regard. The rights so evolved have to be read in conjunction with the other rights such as the right to legal aid and to compensation especially in cases of custodial violence which alone can make these rights meaningful.

The Court in several cases has also issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lockup, particularly of women and children against sexual abuse and for their early trials.

The Court has also pronounced on the right against cruel and unusual punishment. However it has been held that death penalty either per se or because of its execution by hanging by rope does not constitute an unreasonable, cruel or unusual punishment. In one case it was held that delay exceeding two years in the execution of death sentence entitles a convict to get it commuted to life imprisonment. But it was overruled that no such time limit could be fixed for

339 Ibid.
the execution of the death sentence without regard to the facts of the case. A Constitutional Bench has finally held that it ‘may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life’. The debate still goes on the desirability or otherwise of death penalty with it being advocated that death penalty should be done away keeping in view the fact that most of the people who are sentenced to death penalty belong to the lower rung of the society.

**Right To Speedy Trial**

This right has come up in several cases involving under trials, who were in jail for a period longer than the maximum sentence that could be imposed on conviction. In the case of Hussainara Khatoon, it has been held that a procedure which keeps such large numbers of people behind bars without trial for long period cannot possibly be regarded reasonable, just or fair so as to be in conformity with the requirement of Article 21. Bhagwati, J. observed that although the right to speedy trial is not specifically mentioned as a fundamental right, it is implicit in the broad sweep and content of Article 21. In other cases filed by the same petitioner, the Court re-emphasized the expeditious review for withdrawal of cases against under-trials for more than two years and that investigation must be completed within a time-bound programme in respect of under-trials. The Court also ordered release of under-trials held for periods more than the maximum term impossible on them on conviction and also directed the State to provide a lawyer

---

345 Hussainam Khatoon (I) v. Home Secretary, Bihar (1980) 1 SCC 81.
at its own cost for making a bail application to an under-trial. Thus through a series of decisions, the court recognized the right to speedy trial.

Since **Hussainara Khatoon case**, in a large number of cases involving accused charged with serious and non-serious offences, mentally retarded persons and others have come up before the Court and it has held that all persons awaiting trial for long can approach the Supreme Court which will give necessary direction in the matter.\(^{347}\) In **AR. Antulay case** \(^{348}\) the Supreme Court observed that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case cannot be called fair, just and reasonable. “It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable dispatch in all the circumstances of the case.” But whether a case deserves such directions will depend on a number of factors relevant for the determination of the fact if there has been any unfairness in the administration of criminal justice i.e. where in spite of most effective steps on the part of the State because of the complex nature of a case trial could not be held expeditiously the Court may not give any relief beyond asking the State that the trial should be started soon and proceeded from day to day.\(^{349}\) Similarly the delay may be attributable to the conduct of the accused himself.


Despite the clear ruling given by the Supreme Court as to speedy trial, a large number of prisoners continue to languish in jails for long periods. In one case a person was kept in custody for 37 years on an alleged murder charge and the Supreme Court finally requested the Chief Justice of the Calcutta High Court to nominate a Chief Judicial Magistrate to enquire into the matter.  

In Raj Deo Sharma case, the Court took note of the directions issued by it earlier for effective enforcement of the right to speedy trial flowing from Article 21 of the Constitution (as recognized by a five-Judge bench of the Court in A.R. Antulay case). These were based on the maximum punishment which can be imposed for the offence and the time by which the prosecution should be closed, unless for exceptional reasons to be recorded and in the interest of justice, the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit. The exceptional circumstances include the conduct of the accused or the trial has been stayed by orders of the court or operation of law. The whole idea is to speed up the trial in criminal cases to prevent the prosecution of the person from becoming a prosecution of the person arrayed in a criminal trial. No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the reason for prescribing the time frame. However the court has the discretion to grant further time. In this case the Court requested the High Court to remind the trial judges through a circular requiring the bodies to comply with S.309 Cr. P.C. in its letter and spirit and to take note of the conduct of any particular trial judge who violates the same. Following judgments of the Supreme Court and the

---

353 Supra 174.
guidelines laid down by it, the Court upheld the discharge of the appellants where
the trial had not commenced within a period of two years for an offence
punishable with imprisonment up to 3 years (as clarified that in a warrant case,
the trial will be regarded as having commenced when charges are framed under
Section 240 Cr.P.C).  

The Court has noted with concern the fact that almost 73% of the entire
jail population was found to be of under-trials and directed the counsel appearing
for various States and Union Territories to convince State Governments and
Union Territory Administrations to take effective steps within six weeks from
date of order for filing challans/reports particularly in cases involving petty
offences, in respect of which under-trials have been in jail for some time.

Right of inmates of mental hospitals

The admission, treatment and care of inmates in mental hospitals have
been the subject matter of a number of cases before the Supreme Court. Entry into
closed institutions, and the attempts at remedying the conditions within, has been
made possible by Public Interest Litigation. The insistence on state governments
participating in the proceedings, and the widening out of the issue from a single
institution which may initially be under scrutiny to all similar institutions,
generally inform these cases. These cases have also revealed the wide use of some
of the procedural innovations made by the courts particularly the appointment of
committees and continuous monitoring.

The first of such cases to come before the court pertained to the pathetic
plight of under-trial mentally ill. In another case, the Supreme Court looked

into the functioning of the Hospital for Mental Diseases, Shahdara, Delhi.357 The functioning of the Ranchi Mansik Arogyashala came under scrutiny in yet another matter.358 In three cases concerning the administration of hospitals for the mentally ill at Ranchi, Gwalior and Agra, the Supreme Court directed the appointment of committees of management headed by the Union Health Secretary as a logical solution to the problems. However this approach has been criticised360 as it overlooks the factors that brought the cases to the court in the first instance. In the Rancid case361 it was quite obviously brought before the court that the mere existence of administrative structures without inbuilt accountability checks would be an unproductive exercise insensitive to the particular needs of the individual inmate. Yet the court persisted with the appointment of committees of management.

At the same time, the Supreme Court in the case of Supreme Court Legal Aid committee362 shocked by the “uncivilized practice” of keeping inmates chained to cots and in a permanent state of nakedness, directed immediate discontinuance of the practice. However the court allowed the issue to die without utilising the opportunity to enunciate the law concerning fundamental rights of the mentally ill. The court’s increasing tendency to continue to repose trust in state machinery for institutional management consistent with a culture of respect for basic rights of the inmates provokes critical comment given the state’s pathetic record discernible363 even in the cases before the court. This has come out into perspective with the burning to death of 27 “mentally ill” persons who were

359 Ibid.
361 Supra n.182.
363 Supra 184.
chained and could not escape in Erwadi recently. Even then the authorities do not appear to have taken up to the harsh realities.

In a significant judgment, the Supreme Court in Sheela Barse case declared the practice of incarcerating mentally ill persons in jails to be unconstitutional. Directions were given to the State of West Bengal to shift such inmates of jails to mental hospitals and halfway homes as recommended by the commissioners appointed by the court. Further, the court specifically directed that the chief secretary of every state be sent a copy of the order along with the report of the commissioners to examine the recommendations therein and to act upon them. The Chief Secretary of Assam, however, went on record to say that in his understanding the declaration of the Supreme Court as regards the unconstitutionality of jailing the mentally ill applied only to the State of West Bengal. He claimed to be unaware that the jails of Assam held 387 mentally ill persons, 109 of them women, a year after the mandatory direction of the Supreme Court. The Court appointed the Secretary of the Supreme Court Legal Aid Committee to investigate the reasons for the lapses and ensure the implementation of the orders. He recorded harrowing and inhuman abuse of law’s processes to incarcerate innocent persons, in perfect mental health, on unattainable grounds. The court accepted the report observing:

“It is a shocking state of affairs that there is no understanding of the judgment of this Court dated 17.8.1993, which strictly prohibited confining non-criminal mentally ill patients to jail. The State of Assam has a splendid record of having confined 387 persons to jail only on the ground that they were mentally ill. In many of the cases, the commissioner has found that they were, in fact, not mentally ill. In one case a person was confined to jail for merely being ‘talkative’.

At present, no steps have been taken by State of Assam to have rehabilitation homes for non-criminal mentally ill persons.\textsuperscript{365}

The court also issued \textit{suo motu} contempt notices to the Chief Secretary and Inspector-General of prisons. The matter was finally disposed of by the Supreme Court by an order transferring the case to the various High Courts.\textsuperscript{366} It was ordered that each High Court would register the record pertaining to that state as a Public Interest Litigation and make appropriate orders from time to time. The High Court Legal Aid Committee was to be treated as a petitioner to assist the High Court in the matter of monitoring compliance with the directions made by the Supreme Court in the case. It is pertinent that not much has changed even now. When the Erwadi incident took place, the administrative authorities were shifting the blame from one to the other. While it is commendable that the court has taken note of this serious matter and the innovative procedure devised by the court, it has ensured continued judicial monitoring of the states’ record of protecting the rights of its mentally ill citizens even after the case left the Supreme Court, perhaps time has come for a comprehensive pronouncement of the court on the rights of the persons so incarcerated in the absence of any political will in this regard.

**Rights of Inmates of protective Homes**

The Supreme Court has also taken cognizance of and given appropriate directions for the protection of inmates of protective and remand homes for women and children for providing suitable human conditions in the inmates homes and for providing appropriate machinery for effective safeguard of their

\textsuperscript{365} Sheela Barse v. Union of India 1994(4) SCALE 493.

interests.\textsuperscript{367} In \textit{Vikram Deo Singh Tomar} case \textsuperscript{368} it was brought to the notice of the Supreme Court that the female inmates of the ‘Care Home, Patna’ were compelled to live in inhuman conditions in an old mined building. The Supreme Court held that the right to live with human dignity is the fundamental right of every citizen and the State is under duty to provide at least the minimum conditions ensuring human dignity. Accordingly the Court directed the State to take immediate steps for the welfare of the inmates. In the case of Agra Protective Home, after continuous monitoring for many years, the Court directed formulation of broad guidelines by the District Judge for discharge of inmates of the Home and requested the National Human Rights Commission to be involved in supervision of the Agra Protective Home.\textsuperscript{369}

\textbf{Right to Legal Aid}

The Covenant on Civil and Political Rights provides, under para 3(d) of Article 14, that everyone shall be entitled to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance of this right and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. However, the same is not provided as fundamental right in the Indian Constitution. By the Forty-Second Amendment Act, 1976, Free Legal Aid has


been included as one of the Directive Principles of State Policy under Article 39A.\footnote{It is pertinent that Directive Principles are not enforceable in a court of law.}

The Supreme Court recognizing the significance of this right, as early as in 1978,\footnote{M.H Hoskot v. State of Maharashtra (1978) 3 SCC 544: AIR 1978 SC 1548.} held that the right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the Constitution.\footnote{Sheela Barse v. Union of India (1983) 2SCC 96 at 103; Khatri v. State of Bihar (1981) I 5CC 627.} The Court interpreted Article 39 A and held that this Article made it mandatory for the State to provide free legal aid. Every accused who is unable to engage a lawyer and secure legal services on account of reasons such as indigence or incommunicado has a constitutional right to legal aid. This did not mean that some junior lawyer should be appointed. The legal assistance ought to be of the prisoners choosing and the right to counsel means the right to effective counsel.\footnote{Ranjan Dwivedi v. Union of India (1983) 2 5CR 982; Ranchod Mathur Wasawa v. State of Gujrat (1974)2 SCR.} The prisoner ought to be fully informed of his rights. Reasonable remuneration had to be paid to the lawyer by the State. In some cases legal assistance was to be offered even when the prisoner rejected the same. Free transcripts of the relevant judgment have to be given to the prisoners and facilities extended to him to file an appeal.

In Hussainara Khatoon case\footnote{Hussainara Khatoon v. Home Secretary, Bihar (No.2) AIR 1979 SC 1369.} the Supreme Court again held that a procedure that does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘reasonable, fair and just’. Significantly, in the Bhagalpur blinding case\footnote{Khatri and others v. State of Bihar AIR 1981 SC 928; also see Kadra Pahadiya v. State of Bihar AIR 1981 SC 941.} the Court held that the State of
Bihar cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. Bhagwati, J. observed:

“The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but the law does not permit any Government to deprive its citizens of constitutional rights on the plea of poverty.”

The learned Judge further observed that “the constitutional obligation to provide free legal services to an indigent person arises from the time his personal liberty is in jeopardy i.e.as soon as he is arrested and produced before a Magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand by police or jail custody”. The Magistrate or the Sessions Judge before whom the accused appears must be held to be under an obligation to inform the accused of his right. In case an accused is not told of this right and therefore he remains unrepresented by a lawyer, his trial is vitiated by constitutional infirmity and any conviction as a result of such trial is liable to be set aside.

The Supreme Court Legal Aid Committee sought directions for providing effective legal assistance to convicts and under-trials in jails in order to improve their access to justice. On being informed that despite the enactment by

376 Ibid, p.931.
377 Supra 159, p.160.
378 In Ranchod Mathur Wasawa v. State of Gujrat AIR 1974 SC 1143, the Court had condemned the fact that Sessions Judges were not appointing counsel for the poor accused in grave cases.
Parliament in 1987 of the Legal Services Authorities Act the committees contemplated under the Act had not yet been constituted, the court directed the States and the Union Government to take steps within two months to effectively implement the provisions of the Act by issuing notifications, framing rules and constituting legal aid committees at the levels of the talukas, the districts and the state.\textsuperscript{380} Through repeated monitoring and warnings to the State Governments that failure to comply with its orders would result in contempt proceedings being initiated against them.\textsuperscript{381} The Supreme Court was able to ensure that the committees contemplated by the Act were constituted in each of the States and Union Territories. The petition was closed with a series of direction to the States to issue instructions to its officials and the jail authorities to promptly make available to prisoners free copies of judgements. Inform them of their right to avail of legal aid and provide them with effective assistance in applying for and obtaining legal aid for pursuing cases before the trial court, the High Court and the Supreme Court.\textsuperscript{382}

**Right to privacy**

Privacy is an important value that claims recognition in modern times. Social needs and cultural and political circumstances all have a bearing on the legal status of privacy. Privacy as basic human right touches upon fundamental needs and values associated with man’s gregarious nature. Certainly the level of technological and economic development creates pressures to protect these privacy values through legal enforcement techniques. But even in the absence of

\textsuperscript{380} Supreme Court Legal Aid Committee v. Union of India (1998) 5 SCC 762.

\textsuperscript{381} Supreme Court Legal Aid Committee v. Union of India 1998 (2) SCALE 81; Supreme Court Legal Services Committee v. Union of India 1998 (4) SCALE SP 10. The Committee was renamed as such under the Legal Services Authorities Act, 1987.

\textsuperscript{382} Supreme Court Legal Services Committee v. Union of India 1998 (5) SCALE SP 19.
such development, the value of and the basic human right to privacy may prevail irrespective of legal recognition.

By the expression ‘right to privacy’ is meant the right to be left alone to live one’s own life with the minimum degree of interference. In the expanded form it includes a right against interference with his private life, family and home life, attack on his honour and reputation; being placed in a false light, the disclosure of irrelevant and embarrassing facts relating to his private life; spying, prying, watching and interference with his correspondence.

The ancient lawgivers of the Hindus declared serves as Grahe Raja which means “every man is a king in his own house.” The Dharmashastras of ancient India and their commentaries expounded the laws of privacy with this concept as the central theme and the king, being bound to uphold Dharma, had to respect the privacy of the citizens. A high degree of awareness of the need for privacy, as a basic human value, existed in ancient India. Muslims always maintained the distinction between “public and private” and a high level of consciousness about privacy is reflected in their language, culture, architecture and other aspects of everyday life.

The right to privacy is also stipulated in the Covenant on Civil and Political Right under Article 17 para (1), which says that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’. Article 12 of the Universal Declaration of Human Rights, 1948 is almost in similar terms. But this right is not guaranteed under the Indian Constitution. As a concept it may be too broad and moralistic to define it judicially. However, under the Indian law, even an accused person has the privilege of protection of privacy against an arbitrary search. According to Section 165 of the Code of Criminal Procedure; the
power of an officer to conduct a search is limited to quests pursuant to the investigation of an offence. While conducting a search, the officer must enlist two respectable residents of the locality to join him as witnesses. To protect a citizen’s privacy, magistrates must comply with the conditions for warranting a search according to Section 94 of the Code. These conditions are mandatory.

The Supreme Court has significantly enunciated and expanded this right. In Kharak Singh's case, a case involving U.P. Police Regulations, it was held by the Supreme Court that the ‘domiciliary visits’ are an infringement of the right to privacy and further violative of the citizen’s fundamental right of personal liberty guaranteed under Article 21 of the Constitution. Ayyangar, J. In this case observed:

"an unauthorised intrusion into a person’s home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man — an ultimate essential of ordered liberty..."

Subba Rao, J. in this case observed that an individual has a right to be free from restrictions or encroachments on his person, whether they are directly imposed or indirectly brought about by calculated measures, however the majority did not agree with him. They held that the right to privacy is not a guaranteed right under the Constitution, and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III. In this case only domiciliary visits were considered as unconstitutional.

383 Supra 130.
385 Ibid., p.1306.
In *Govind v/s State of Madhya Pradesh*\(^{386}\) the right to privacy was assumed to be a part of personal liberty guaranteed by Article 21 of the Indian Constitution. However the court could not clearly enunciate the right since a larger bench in Kharak Singh had held that such a right is not guaranteed under the Constitution. This right has now been explicitly recognized in the **Telephone Tapping case**\(^{387}\) which involved Section 5(2) of the Telegraph Act, 1885 that has given the Central or State Government power to intercept messages or telephone conversations (telephone tapping) on “occurrence of any public emergency or in the interest of public safety”. The Supreme Court held that in the absence of a just and fair procedure regulating the exercise of power, tapping of telephones would infract the freedom of speech under Article 19(1) (a) of the Constitution. In this case the court observed that India is a signatory to the Covenant on Civil and Political Rights. Article 17 of the Covenant does not go contrary to any part of our municipal law. Article 21, therefore has to be interpreted in conformity with the international law. Right to privacy is a part of right to ‘life’ and ‘personal liberty’ enshrined under Article 21 of the Constitution. The Court observed that whether the right to privacy can be claimed or has been infringed in a given case would depend on the facts of the case. “But the right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as “right to privacy”... Right to privacy would certainly include telephone conversation in the privacy of one’s home or office.” The court issued detailed directions as to the use of the power of telephone tapping by the government and directed that the procedure followed must be just, fair and reasonable.

In a matter regarding doctor-patient relationship and the question when disclosure of private facts is permissible, the Court has held that the right to

\(^{386}\) *Govind v. State of Madhya Pradesh* AIR 1975 SC 1378.

\(^{387}\) *People's Union for Civil Liberties v. Union of India* 1996(9) SCALE 318: (1997)1 SCC 301.
privacy is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.\textsuperscript{388}

The question of privacy has also involved debates on the right of abortion and use of contraceptives. This issue has seen a lot of controversial decisions in the US and in India as well the debate is going on whether a woman has the right to decide if she wants to abort the child.\textsuperscript{389} The Court while awarding compensation in a case\textsuperscript{390} where a quack performed an abortion resulting in the death of the woman observed that the judgment should not be understood as to have expressed any opinion on the right of the petitioner or for that matter any woman of this country to go for abortion, as this question has not arisen directly in this case. Thus the court did not express any opinion whether the right to abortion can be read into Article 21 of the Constitution and if so to what extent adopting a very cautious approach.

\textbf{Right to information}

The Covenant on Civil and Political Rights lays down under Article 19 para 2 that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and use information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. The Indian Constitution while under Article 19(1) (a) guarantees the freedom of speech and expression as fundamental rights, the right to information is not specifically mentioned in Part III of the

\textsuperscript{388} \textit{Mr. ‘X' v. Hospital ‘Z'} (1998) 8SCC 296.
\textsuperscript{389} the debates with regard to the Medical Termination of Pregnancy Act and the Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.
\textsuperscript{390} \textit{Jacob George (Dr.) v. State of Kerala} (1994) 3 SCC 430.
Constitution. In the Judges Transfer case\textsuperscript{391}, Bhagwati, J. stated that the concept of an open government is the direct emanation from the right to free speech and expression guaranteed under Article 19(1) (a). Therefore non-disclosure of information and safety in regard to the functioning of government must be the rule with an exception justified only where the strictest requirement of public interest so demands. In the Indian Express case\textsuperscript{392}, Venkataramajali, J. observed that the right to information is implied in freedom of speech and expression stating that:

“The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves.”

All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.”

Thus the right to know has been recognized in Article 21 as a necessary ingredient of participatory democracy. The court while considering public interest litigation by a citizen seeking protection against the neglect of sanitation by the State which led to pollution and other hazards stated that citizens have a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The court said that, “a citizen has a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy existed in the old times that the State is not

\textsuperscript{391} Supra122.
bound to disclose the facts to the citizens and that the State cannot be compelled by the citizens to disclose facts does not survive now to a great extent. Under Article 19 there exists the right of freedom of speech. Freedom of speech is based on the foundation of the freedom of right to know. The State can impose and should impose the reasonable restrictions in the matter like the other Fundamental Rights where it affects the national security or any other matter affecting the nation’s integrity. But this right is limited and particularly in the matter of sanitation and other allied matters, every citizen has a right to know how the State is functioning and why the State is withholding such information in such matters.”

Many states have enacted the Freedom of Information Act but still the information is not easily accessible to the common masses and a lot of information is still veiled in secrecy or the government claims privilege with respect to it.

**Right to Travel Abroad**

The right to travel abroad is a guaranteed right under Article 12 para (2) of the Covenant on Civil and Political Rights, however it is not specifically recognized under Part III of the Constitution as a fundamental right. The Universal Declaration of Human Rights in Article 13(2) provides that “everyone has a right to leave any country, including his own, and to return to his own country”. The Supreme Court in *Satwant Singh’s case* held “the right to go abroad is a part of the person’s ‘personal liberty’ within the meaning of Article 21 of the Constitution, and consequently no person can be deprived of this right

---

393 L.K Koolwal v. State of Rajasthan and others AIR 1988 Rul. 2 at4 pr.3.
394 Satwant Singh v. Assistant Passport (New Delhi) AIR 1967 SC 1836.
except according to procedure established by law.” The Court observed that the expression personal liberty provided under Article 21 takes in the right of locomotion to go where and when one pleases, and to travel abroad.\textsuperscript{395} In Maneka Gandhi case\textsuperscript{396} the Supreme Court upheld the said decision. The Court held that no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure.\textsuperscript{397} Bhagwati, J. held that the right to go abroad “is a highly valuable right which is a part of personal liberty, an aspect of the spiritual dimension of man, and it should not be lightly interfered with.”\textsuperscript{398}

Right not to be imprisoned for inability to fulfill a contractual obligation:

The Indian Constitution does not specifically guarantee under Part III on Fundamental Rights, the right not to be imprisoned for inability to fulfill a contractual obligation unlike the Covenant on Civil and Political Rights which provides under Article 11 that:

"No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation."

The Supreme Court in Jolly George Varghese v/s Bank of Cochin\textsuperscript{399} held that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is a violation of Article 21 of the Constitution. In this case, Krishna Iyer, J. observed “where the judgment-debtor if once had the means to pay the debt but subsequently, after the date of decree, has no such

\textsuperscript{395} Ibid, p.1852
\textsuperscript{396} Supra 117
\textsuperscript{397} Ibid, p.622.
\textsuperscript{398} Ibid, p.651.
\textsuperscript{399} AIR 1980 SC 470.
means or he had money on which there are other pressing claims, it is violative of Article 11 of the Covenant on Civil and Political Rights to arrest him and confine him in jail so as to coerce him into payment.”400 He also held that the freedom from imprisonment for non-payment of debt is covered under Article 21 of the Constitution. According to him:

“The high values of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligate the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence.”401

Right to Compensation

The Covenant on Civil and Political Rights, under Article 9, para 5, lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.” However, the right to compensation is not specifically guaranteed under the Indian Constitution. India at the time of ratification of the Covenant had expressly made a reservation in this regard by stating that under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State. The reservation has lost its relevance in view of the decisions of the Courts which have held that the action for compensation against the State in such cases is maintainable and the State has no right to take any action which may deprive the citizen of the enjoyment of his basic fundamental rights except in accordance with a law which is reasonable, fair and just. In Rudul Shah case402 the Supreme Court held:

‘Article 21 which guarantees the right to life and liberty will be denuded

400 Ibid, p.474
401 Id at 475
of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to much its violators in the payment of monetary compensation.... The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield."\(^{403}\)

Compensation has been awarded by the Court for the infringement of fundamental rights in a number of cases, most of which pertain to state atrocities.\(^{404}\) In **Nilabati Behera case**\(^{405}\) where the son of the petitioner had died in police custody, the Supreme Court awarded compensation to the petitioner. The Court elaborately discussed the principles regarding the grant of compensation in such cases\(^{406}\) and held that the Court in proceedings under Article 32 or 226 of the Constitution can mould the relief by granting compensation by way of penalising the wrong-doer and fixing the liability for the public wrong on the State which fails in its public duty to protect the human rights of the citizen and award compensation to the victim or the heir of the victim as the case may be and the award of such compensation is independent of the rights available to the aggrieved party to claim compensation under the private law by an action based

---

\(^{403}\) *Ibid*, p.1089.


\(^{406}\) See *supra* Chapter II.
on tort through a civil action or/and prosecute the offender under the penal law.\textsuperscript{407} Following this judgment, compensation has been awarded in a number of cases.\textsuperscript{408} Compensation has also been awarded on grounds other than police atrocities.\textsuperscript{409} The Court has even held that the compensation amount can be recovered from the

\textsuperscript{407} These principles have been reiterated by the Court in D.K Basu v. State of West Bengal (1997) 1 SCC 416; MR 1997 SC 610 where the court has categorically held that the defence of sovereign immunity would not be available in such cases.

\textsuperscript{408} Joginder Kumar v. State of Uttar Pradesh (1994) 4 5CC 260; State of Madhya Pradesh v. Shyamsunder Trivedi (1995) 4 5CC 262; Sawinder Singh Grover, Re Death of 1995 Supp (4) SCC 450 (the Union of India and the Directorate of Enforcement were directed to pay Rs.2 lacks to the widow of the deceased); Kewal Pati v. State of Uttar Pradesh (1995) 3 5CC 600 (death of convict killed by co-accused in jail, jail authorities failed to ensure life and safety of convict in jail so the State directed to pay its. 1 lakh to widow and children); Dhananjay Sharma v. State of Haryana (1995) 3 5CC 757: AIR 1995 SC 1795 (here it was refused as the petitioners (detenus) themselves were not fair before the Court); Inder Singh v. State of Punjab (1995) 3 5CC 702: AIR 1995 SC 1949 (Rs 1.50 lakhs were directed to be paid to the Rs of the seven victims who were abducted and eliminated by police alongwith costs of Rs.25,000); Navkiran Singh v. State of Punjab (1995) 4 8CC 591 (kidnapping and murder of advocate by Punjab Police); Paramjit Kaur v. State of Punjab (1996) 7 SCC 20; Ec. Pathak v. State of Uttar Pradesh (1995) 6 SCC 357 (detenu in illegal confinement in police station and subjected to torture, hence compensation of It. 10,000 independent of private law remedies); People's Union for Civil Liberties v. Union of India (1997) 3 5CC 433: AIR 1997 SC 1203 (two persons killed in fake encounter, State of Manipur directed to pay Rs.1 lakh to families of each of the deceased and costs of Rs.10,000); Thirath Ram Mini v. State of Punjab (1997) 11 5CC 623 (wrongful confinement, direction to pay P.s. 10,000); Malkiat Singh v. State of Uttar Pradesh (1998) 9 SCC 351 (Pilibhit firing case and death of petitioner’s son in an alleged encounter with police, State Government directed to pay Rs.5 lakh as compensation); Union of India v. Luithukla (1999) 9 SCC 273 (held that the High Court was right in awarding Rs.1 lakh to the detenu's wife whose body could not be found and was last seen in company of security forces); Paramjit Kaur v. State of Punjab (1999) 2 SCC 131: AIR 1999 SC 340; Ajab Singh v. State of Uttar Pradesh (2000) 3 SCC 521 (custodial death, state ordered to pay Rs.5 lakhs); Thissain v. State of Kelala (2000) 8 5CC 139 (wrongful imprisonment for 5 years due to a wrong conviction, held entitled to compensation).

\textsuperscript{409} Gudalure M.J Cherian v. Union of India 1995 Supp (3) SCC 387 (Gajraula nuns’ rape case-Rs. 2,50,000 to each of the two rape victim sisters and Rs. 1 lakh each to other sisters who were assaulted and to the maidservant who was manhandled); Delhi Domestic Working Women’s Forum v. Union of India (1995) 1 5CC 14 (compensation for rape on domestic working women and the National Commission for Women was also directed to frame a scheme for compensation and rehabilitation of rape victims); Indian Council for Enviro-Legal Action v. Union of India AIR 1996 SC 1446 (costs imposed on polluting industries to defray the cost of undertaking remedial measures); MC. Mehta v. Karnal Nath (2000) 6 SCC 213: AIR 2000 SC 1997 (person who is guilty of causing pollution has to pay compensation for restoration of environment and ecology and even exemplary damages can be imposed).
guilty officials.\textsuperscript{410} The Court has however held that that award of damages at the instance of a public-spirited body or organization or forum is improper where it was neither an applicant nor was directly affected by the alleged tortious act of misfeasance in public office and exemplary damages cannot be awarded to the State for violation of fundamental rights of its citizens or for arbitrary action of its own officers.\textsuperscript{411}

The practice of the states is still not very consistent in regard to grant of compensation and perhaps there is need for suitable legislation in this direction.

Right to Good Governance

In last several years, the Supreme Court has taken the view that public interest litigants could move the court directly to ensure that corrupt officials and administration is dealt with according to law and such other directions which the higher judiciary may give. The court was perhaps prompted by the increasing number of scams that were being brought to light involving huge stakes and the tardiness of the administrative process in dealing with the same coupled with the political action which vacillated according to the political party which was in power and to which party the accused belonged. However this has led to the speculation as to whether the right to good governance is also included in the right to life and personal liberty.\textsuperscript{412}

In Vineet Narain v/s Union of India,\textsuperscript{413} where the petitioner complained of inertia or inaction on part of the Central Bureau of Investigation to initiate investigation against the politicians and bureaucrats named in the Jain diaries. The Supreme Court held that in absence of appropriate legislation and even executive orders in such matters of public interest and urgency, the Supreme Court can issue orders and directions to fill the gap for enforcement of the fundamental rights and doing complete justice in the cause. The Court directed statutory status to be given to the Central Vigilance Commission and that it should be made responsible for efficient working of the CBI. The criteria and guidelines for appointment of Chief Vigilance Commissioner were laid down. The Court is also maintaining a continuous supervision over other matters before it. The Court also took note of the nexus existing between the politicians, bureaucrats and mafia and issued necessary directions.\textsuperscript{414}

**Right to Livelihood**

The Directive Principles of State Policy bear some reference to the right to livelihood.\textsuperscript{415} Initially the view had been taken that right to life in Article 21 does not include the right to livelihood.\textsuperscript{416} After some controversy on the issue\textsuperscript{417} the

\textsuperscript{413} AIR 1998 SC 889.

\textsuperscript{414} Dinesh Trivedi v. Union of India (1997) 4 SCC 306.

\textsuperscript{415} Article 39 (a) of the Constitution of India provides that the State shall direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.

Court has now clearly held that the right to livelihood is included in the right to life “because no person can live without the means of living, that is, the means of livelihood”.\textsuperscript{418} Since then this right has been expanded and adverted with reference to a number of other rights. In \textit{Harjit Singh case}\textsuperscript{419}, taking into account the fact that right to livelihood was a fundamental right, plight of victims of 1984 anti-Sikh riots posed a humanitarian problem and that Reserve Bank of India had already directed the banks not to charge more than 6\% interest on loans advanced to such victims for rehabilitation, the Supreme Court directed the facility to be extended to those who had taken loan from financial institutions other than a bank. In \textit{Banwasi Seva Ashram case}\textsuperscript{420} the complaint of the tribal’s was that the government sought to declare certain forest areas as reserve area which would oust them from their traditional habitat and deprive them of the means of livelihood. The Court had no doubt that the ousters are to be adequately compensated, rehabilitated and given alternative housing sites.

It has been held that the right of agriculturists to cutisation is a part of their fundamental right to livelihood.\textsuperscript{421} However the Court has held\textsuperscript{422} that the right to livelihood under Article 21 cannot be so widely construed which may rush in defeating the purpose sought to be achieved by the aforesaid article. “\textit{It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all...}”

\textsuperscript{417}\textit{Board of Trustees, Port at Bombay v. D.R Nandkarni} (1983) 1 5CC 124: AIR 1983 SC 109 where the court held that right to livelihood is included in Article 21; \textit{Begzula Bapi Rqju v. State of Andhra Pradesh} (1984)1 SCC 66: AIR 1983 SC 1073 where the Court followed the earlier decisions which is not included.\textsuperscript{418}


\textsuperscript{419} \textit{Harlit Singh v. Union of India} (1994) 2 5CC 553.\textsuperscript{420}

\textsuperscript{420} \textit{Banwasi Seva Ashram v. State of Uttar Pradesh}

\textsuperscript{421} \textit{Dalmia Cement (Bharat) Ltd v. Union of India} (1996) 10 SCC 104.\textsuperscript{422}

sorts of claims relating to the legal or contractual rights of the parties completely ignoring the person approaching the court and the alleged violation of the said right.” Similarly, the compulsory acquisition by the State for public purpose is exercise of its power of eminent domain does not amount to deprivation of right to livelihood.\textsuperscript{423}

**Right to education**

While Article 13, para 1 of the Covenant on Economic, Social and Cultural Rights lays down that *the States Parties to the present covenant, recognized the right of everyone to education.* Para 2 (a) of the same Article states that, (a) *Primary education shall be compulsory and available free to all*. Although right to education does not find place in Part III of the Constitution which specifies the fundamental rights, the right to education has occurred in at least three articles in Part IV of the Constitution.\textsuperscript{424} Though Article 45 provides that the goal of providing free education to children up to the age of 14 years was to be achieved within ten years of the adoption of the Constitution, this goal has still not been achieved. The schemes framed by the States have remained only on paper and nothing much has been done at the level of implementation. Taking into account the failure of the State to implement this Directive Principle, the Supreme Court in *Mohini Jain’s case*\textsuperscript{425} held that “the right to education flows directly from right to life which is a specified fundamental right guaranteed under Article

\begin{itemize}
\item \textsuperscript{424} Article 41 of the Constitution of India provides that “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Article 45 of the Constitution of India lays down that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years. Article 46 of the Constitution provides for the promotion of the educational interests of the weaker sections of the people.
\item \textsuperscript{425} *Mohini Jain v. Union of India* (1992) 3 SCC 666.
\end{itemize}
However, how much and what level of education is necessary to make the life meaningful was not made clear in this case. In this case the right to education was declared in a positive tone and in an absolute form but as it would have led to serious difficulties, the right was modified to some extent in the subsequent judgement of the Supreme Court. The Court has now held that this right is subject to the economic capacity of the State, It may be said that when even after more than 50 years of the Constitution, the State has not been able to provide adequate facilities for education, is it proper to subject the availability of the right to the economic capacity of the State.

The Court has also entertained matters regarding the scheme of capitation fees to be charged in cases and orders have been passed from time to time and virtually nationalized the education in medical field though the matter is now pending before a larger bench to finally resolve this controversial issue though this could be said to be a matter falling within the domain of policy. Through these cases, the Court has tried to provide access to post-school technical education for all, including some of those who cannot afford it.

**Right to Health Care**

‘Safe and healthy working conditions and the creation of conditions which would assure to all medical service and medical attention in the event of sickness’

---

are the rights which are stated under Article 7, para (b) and Article 12, para 2 (d) respectively of the Covenant on Economic, Social and Cultural Rights. While the right of the workmen to medical benefit finds mention under Article 39 of the Constitution, provision for public health is made in Article 47 there is no fundamental right to health or health care guaranteed under the Constitution. However the Supreme Court in Regional Director, E.S.I Corporation v/s Francis De held that concomitant to Article 21 read in the light of Articles 38 and 39, the right to medical aid and disability benefit to a workman is his/her fundamental human right. This is but natural because the right to life has of necessity to include the protection against health hazards. The Supreme Court emphasizing the importance of this right has observed:

“This expression ‘life’ assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which involves right to livelihood, better standard of living, hygienic conditions in the workplace, leisure facilities, opportunities to eliminate sickness and physical disability of the workmen. Health of the workman enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Health is a state of complete physical, mental and social well-being and right to health, therefore, is

428 Article 39 (e) of the Constitution of India provides that the State shall direct its policy towards securing that the health and strength of workers, men and women ... and that citizens are not breed by economic necessity to enter avocations unsuited to their age or strength. Clause (f) of the same Article provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

429 Article 47 of the Constitution of India reads “47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health — The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

430 (1993)4 SCC 100.

a fundamental and human right of the workmen. In expanding economic activity in liberalised economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunities for health and vigour of the workman assured in relevant provisions in Part IV which are integral part of right to equality under Article 14 and right to invigorated life under Article 21 which are fundamental rights to the workman.”

Thus the Court has held the availability of the right even against private industries. This right has been reiterated by the Court holding that the right to health and medical care to protect health while in service or post-retirement is a fundamental right of a workman under Article 21 of the Constitution. The case highlighted occupational health hazards and diseases of workmen employed in the hazardous industry and the court directed that if any workman was certified as suffering from an occupational hazard, each such workman would be entitled to compensation of Rs. 1 lakh payable by the concerned industry within three months thereof.

In Vincent v/s Union of India though the Court did not give any direction regarding ban on import, manufacture, sale and distribution of injurious and sub-standard drugs as the matter was observed to be a technical one and the court expected the Government of India to get the matter examined by a competent body. It did hold that the right to life must include protection against health hazards. In C. E. S.C. Ltd v/s Subhash Chandra Bose Ramaswamy, J.

432 Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42.
433 (1987)2 5CC 165: AIR 1987 SC 990. Similarly the High Court of Allahabad has held that the right to life includes a right to a healthy life in Shaibya Shukla v. State of Uttar Pradesh AIR 1993 All 171 (a I’LL was initiated to stop the sale of soyabean seeds traced with poisonous chemicals and as such unfit for human consumption).
434 Supra 126.
highlighted the importance of this right. Earlier in a significant judgement\textsuperscript{435}, the Supreme Court directed that in medico-legal cases, doctors must treat patients first to save their lives even though the case may not come within the jurisdiction of the hospital. In another case\textsuperscript{436} the Court held that the failure on the part of government hospital to provide timely medical treatment results in violation of his right to life guaranteed under Article 21. In this case, the petitioner no.2 was denied treatment at various government hospitals even though his condition was very serious and the court directed compensation of Rs.25,000 to be paid. The court also held that the State cannot avoid its constitutional obligation in respect of providing adequate medical services on account of financial instability.\textsuperscript{437} The Court has also stressed the obligation of the State to tone up health services\textsuperscript{438} and that right to healthy life is inherent in Article 21 and would justify breach of confidentiality or right to privacy of another person.\textsuperscript{439} Despite this it is seen that the victims of accidents are denied immediate medical aid which leads to loss of life and no action is taken against the erring doctors.

In a Public Interest Litigation\textsuperscript{440} highlighting serious deficiencies and shortcomings in the matter of collection, storage and supply of blood through blood centres operating in the country, the Court issued directions for establishing a ‘National Council for Blood Transfusion’ as well as State Councils, licensing of blood banks, elimination of system of professional donors within 2 years and for enactment of a legislation for regulating collection, processing, storage, distribution and transportation of blood and operation of blood banks. However

\textsuperscript{436} Paschim Banga Kizet Mazdoor Samity v. State of West Bengal MR 1996 SC 2426.
\textsuperscript{437} In State of Punjab v. Ram Lubhava Bogga (1998)4SCC 117: AIR 1998 SC 1703, however the Court held that the decision of the State to restrict financial assistance to its employees for medical treatment within the resources of the State is not violative of Article 21.
\textsuperscript{438} Ibid.
\textsuperscript{439} Mr ‘X’ v. Hospital ‘Z’ (1998) 8 SCC 296.
not much has been done in this direction despite lapse of 5 years since the judgement and further directions having been issued. The Court has appointed a committee to examine which drugs are required to be banned from manufacture and sale in India.

The Court has also upheld the striking down of a clause in a term policy of the LIC restricting its availability to persons employed in government or quasi-government organizations.

Right to shelter

Though not a case of PIL, the decision of the Supreme Court in **Shantistar Builders v/s Narayan K. Totarne** significant for laying down the fundamental right to shelter which essentially follows the principles laid down in a series of PILs and has a bearing on a number of other rights. The right to shelter had been discussed in **Pavement Dwellers case** but there was no definite pronouncement on the same. In the present case, speaking for a 3-Judge Bench, Ranganath Mishra, J. said that clothing, shelter and food are the basic needs of human beings and that right to life would take within its sweep not only right to food, clothing and decent environment but also the right to reasonable accommodation. By emphasizing on the element of reasonableness, he meant to draw a distinction between the needs of an animal and that of a human being. Animal needs merely protection of the body against the vagaries of nature and weather. On the other hand, human beings have to grow physically, mentally and intellectually. It need not always be a well built comfortable or luxurious home.

---

even a mud-built thatched house or a mud-built fireproof accommodation may be enough in the particular circumstances of India. In this case right to shelter was not directly in issue and malpractices by builders had been alleged. It may be said that the observation that right to shelter is a part of right to life was only obiter which did not influence the actual decision. But treating the right to reasonable accommodation as a part of constitutionally guaranteed right to life definitely adds flavour and weight to the decision and gives hope to the teeming millions.\footnote{Supra 244}

Similarly in \textbf{Charnel Singh case} \footnote{Supra 249} the Court held that right to live is secured only when a human being is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. All rights under the Universal Declaration of Human Rights, various Conventions or under the Constitution cannot be exercised without these basic human rights. Shelter for a human being is not a mere protection of his life and limb. It is home where he has opportunity to grow physically, mentally, intellectually and spiritually. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being. Want of decent residence frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. Thus one should have permanent shelter
to equip himself to improve his excellence as a useful citizen. This right has been reitered subsequently in a number of decisions.

Right to Water

The Court has held the right to water to be a fundamental right under Article 21 observing that water is the basic need for the survival of human beings and the right can be served only by providing source of water where there is none. The resolution of the United Nations Organisation in 1977 to which India is a signatory, has also, during the United Nations Water Conference, unanimously recognized this right. It has been held that a school must provide drinking water to the children as they have a right to water.

Right to Food

It is common knowledge that deaths have been rampant in almost all parts of the country on account of starvation. It is not a case that there are not enough food grains available in the country but it is basically the short sightedness of the governmental policies and lack of political and executive will that has made the situation pathetic in some districts of the country more specifically in Orissa, Rajasthan, Andhra Pradesh and Madhya Pradesh. Taking note of this, a Public Interest Litigation has been filed in the Supreme Court in which the Supreme

---

447 Shiv Sagar Tiwari v. Union of India (1997) 1 SCC 444 where the court observed that life, livelihood and shelter are so mixed mingled and fused that it is difficult to separate them; Ahmedabad Municipal Corp., v. Nawab Khan Gulab Khan (1997) 11 SCC 121: AIR 1997 SC 152 where the court observed that though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the constitutional duty to provide adequate facilities and opportunities for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful.


449 All India Lawyers Union (Delhi Univ.) v. Union of India 1999(77) DLT 578.

450 People's Union for Civil Liberties v. Union of India WP (Civil) of 2001.
Court has issued notices to the States made respondents in the petition and to the Union of India to file a status report in their states. Some states have denied the incidence of starvation deaths in their states but this is not borne out by the actual facts. The Court is monitoring the matter and issuing directions from time to time particularly with reference to the availability of food to persons falling below the poverty line (BPL).

**Right to Environment**

Environmental law is a fast developing branch of law in India. This growth is conspicuous by the remarkable judicial as well as legislative activism. Acutely concerned with the growing environmental degradation in the country, the higher judiciary, especially the Supreme Court of India has armed itself with techniques of judicial innovation and set upon the task of confronting these environmental challenges with a new vigour. Though India has an impressive array of constitutional, legislative and judicial measures not much could effectively have been done in terms of environmental protection until the dawn of Public Interest Litigation. Indeed the environmental litigation is an area where the court has utilized the maximum of the procedural innovations made by it.

1. **Right to healthy environment**: The Court has expanded the contours of the right to life enshrined in Article 21 to include right to healthy environment. The first indication of the right to a wholesome environment may be traced to the

---

451 Some of the important constitutional provisions dealing with environmental protection are Articles 48A and 51 A(g) which enunciate the national commitment to protect and improve the environment. Article 48A provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51 A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.


**Doon Valley case**\(^{454}\) where the court ordered the closure of some limestone quarries on the ground that their operation was upsetting the ecological balance of the region. The Court has recognized that environmental matters\(^{455}\) which may at times bring unemployment and loss of revenue but life, health and ecology have greater importance to the people. While allowing a petition\(^{456}\) seeking to forbid the construction of government buildings in place of a recreational park, the Andhra Pradesh High Court reiterated that the law on environmental protection gains priority as a right to life and personal liberty over and above the common law theory of ownership of land. The waiver of the traditional rule of locus standi especially in environmental matters has encouraged citizens to bring more and more issues of public concern before the courts.

2. The Court has recognized the right to be free from pollution. In **MC. Mehta case**\(^{457}\) where the petitioner alleged that pollution in India is mainly on account of increase in the number of vehicles in the cities. The Court directed the Delhi Administration to furnish a complete list of prosecutions launched against heavy vehicles for causing pollution. The Court has been continuing to monitor the issue and has issued directions from time to time such as regarding use of CNG fuel. The directions issued by the Court include prohibition on plying of commercial vehicles which are fifteen years old by 2.10.1998\(^{458}\), restriction on plying of commercial vehicles during day time, expansion of pre-mixed oil dispensers, ban on supply of loose 2T oil at petrol stations and service garages\(^{459}\) and ban on registration of private non-commercial vehicles not conforming with

---

\(^{455}\) For instance MC Mehta v. Union of India AIR 1988 SC 1037 (closure of tanneries); case involving relocation of industries in Delhi.  
\(^{457}\) M.C. Mehta v. Union of India AIR 1991 SC 1132.  
\(^{458}\) This order was later modified by another judgement of the Supreme Court and the ban on plying commercial vehicles is to be implemented in three phases.  
\(^{459}\) M.C. Mehta v. Union of India AIR 1998 SC 2963.
Euro-II emission norms with effect from 1.4.2000. Mother PIL alleged atmospheric pollution caused by the discharge of effluents and ash components from the boiler of a sugar factory.\textsuperscript{460} However, on the assurance given by the sugar factory that various remedial measures had been initiated, the court directed the UP Pollution Control Board to ensure compliance with the undertaking given by the factory.

Regarding noise pollution, the Calcutta High Court has held that provisions of the Environmental Protection Act, 1986 providing time limits and decibel limits for noise in different places and their extension to restrictions on use of loudspeakers for call of azan before 7 a.m. does not violate the freedom of religion.\textsuperscript{461}

While treading the path of judicial innovation, the Supreme Court has invented an impressive range of concepts and principles. The principles of strict and absolute liability\textsuperscript{462}, the principle of sustainable development, the polluter pays principle, the precautionary principle and the Public Trust Doctrine has thus found firm footing in Indian jurisprudence. In a series of judgements, the Supreme Court has incorporated the principle of sustainable development, the polluter pays principle and the precautionary principle as part of the law of the land.\textsuperscript{463}

\textsuperscript{461} Moulana Mufti Syed Noorur Rehiman Barkati v. State of West Bengal AIR 1999 Cal 15.
\textsuperscript{462} Finding the rule of strict liability as laid down in Rylands v. Fletcher (1886) LR 1-11. 330, to be unsuitable for dealing with enterprises engaged in hazardous or inherently dangerous activities, the court unanimously held in the \textbf{Sriram Gas Leak case} (MC Mehta v. Union of India AIR 1987 SC 1086 at 1099) that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in operation of such hazardous or inherently dangerous activity resulting in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands case.
\textsuperscript{463} \textbf{Indian Council for Enviro -Legal Action} v. \textbf{Union of India} IT 1996 (2) SC 196; \textbf{Vellore Citizens Welfare Forum} v. \textbf{Union of India} JT 1996 (7) SC 375; \textbf{MC. Mehta} v. \textbf{Union of India}
Rejecting the notion that development and environmental protection cannot go together, the apex court held the view that sustainable development has now come to be accepted as ‘a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems’. Thus, pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystem. The polluter pays principle has been interpreted by the court to mean that the absolute liability for harm to the environment extends to the cost of restoring the environmental degradation in addition to compensating the victims of pollution. The financial cost of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution.

The precautionary principle comprises three ingredients:-

a) Environmental measures by the state government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation,

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

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

Primarily corroborating the view that certain common properties such as rivers, sea shore, forests and the air are held by the government in trusteeship for free and unimpeded use of the general public, the Supreme Court has explained

the concept of Public Trust Doctrine as implying that the State as a trustee is under a legal duty to protect the natural resources and these resources meant for public use cannot be converted into private ownership.464

The court has entertained Public Interest Litigation’s pertaining to protection of forest465, of wild life466, constituting authority under Section 3(3) of the Environmental Protection Act, 1986467, the protection of the Taj468, traffic chaos469, solid waste disposal in the urban metropolises470, disposal of hazardous waste471, regulation of manufacture and sale of pesticides472, constitution of the Coastal Zone Management Committees at the national473 issuance of fishing permits to and state levels474, safety aspects of laying gas pipelines, tribal residing

465 Samatha v. State ofAndhra Pradesh AIR 1997 SC 3297 where the court gave an extended meaning to forest; Chairman-cwn-MD, Tea Plantation Corporation Ltd v. A4Kg Srinivos Yhners AIR 1999 SC 111 (cancelled a contract for expansion of tea plantation); TN Godavarman v. Union of India AIR 1997 SC 1228 and 1233 where the court has laid down sound and compulsory norms for forest protection and asked the establishment of commits at state level to oversee observance of these norms; F N Godavarman v. Union of India AIR 1999 SC 43 where the court prohibited till further orders culling of particular trees that are considered to be diseased; TN Godavarman v. Union of India AIR 1999 SC 97 where the court took note of the large scale mining and reckless denudation of forests in violation of the orders of the court.
466 Centre for Environmental Law WWF-I v. Union of India AIR 1999 SC 354 where the court directed that the Animal Husbandry Department is to establish veterinary centres within the vicinity of each national park/sanctuary to undertake immunization of live stock. The Court has also directed the state governments to frame rules with a view to checking poaching.
468 M.C. Mehta v. Union of India MR 1997 SC 734; AIR 1999 SC 354 where coal/coke based industries in Taj Trapezium were ordered either to change over to natural gas or to be relocated outside T1’Z; MC Mehta v. Union of India (1998) 5 SCC 720 and (1998)9SCC 93 (Yanni concert); MC. Mehta v. Union of India (1998)9 SCC 381 (air quality around the monument); MC. Mehta v. Union of India (1998) 8 SCC 711 (shifting of slaughter house in the area).
469 The court took suo motu notice of the chaotic traffic and pollution in Delhi Sno Mo/n Proceedings in Re: Delhi Transport Department (1998) 9 SCC 250
471 Research Foundation for Science and Technology v. Union of India 1997 (5) SCALE 495; 1998 (1) SCALE 184; 1998(2) SCALE 473.
472 Dr Ashok v. Union of India (1997) 5 SCC 10.

224
in the Pench National Park\textsuperscript{475}, garbage disposal in Delhi\textsuperscript{476}, relocation of industries in Delhi\textsuperscript{477} and drinking water for Delhi\textsuperscript{478} Questions of right to environment vis-a-vis the rights of the tribal’s have also been raised in a number of cases.\textsuperscript{479}

Environment is an area where the court has made and used its procedural innovations to the maximum and in the absence of political will, the court’s intervention appears to be necessary though some of the orders of the Court have been criticized as being over-broad and the court has faced problems in getting its directions implemented.

**Right to Work**

The right to work finds mention in Article 6(1) of the Covenant on Economic, Social and Cultural Rights. This right has been the subject matter of debate the world over with their hardly being any country where it is granted as an enforceable right. It has not been granted as a fundamental right under the Indian Constitution but is provided for in the Directive Principles of State Policy.\textsuperscript{480} This right has been qualified by the limits of the economic capacity of the State and its development. Thus it has been held that persons employed under any scheme such as Jawaharlal Nehru Rozgar Yojna cannot claim regularisation of their employment when that scheme comes to an end or the money for it is

\begin{itemize}
\item \textsuperscript{475} Animal and Environment Legal Defence Fund v. Union of India (1997) 3 SCC 549.
\item \textsuperscript{476} Dr. BA Wadhera v. Union of India (1996) 2 SCC 594.
\item \textsuperscript{477} M.C. Mehta v. Union of India (1996) 4 SCC 750.
\item \textsuperscript{479} Pradeep Kishen v. Union of India (1996) 8 SCC 599; Banwasi Seva Ashram; Samatha.
\item \textsuperscript{480} Article 41 of the Constitution of India provides that “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”
\end{itemize}
exhausted. While the courts have still not recognized any judicially enforceable obligation of the state to find work or means of livelihood for its citizens, it has been held that right to work of workman, lower class, middle class and poor people is a means of development and source to earn livelihood. Though, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating there from are species to make them right to life and dignity of person real and meaningful. Thus a person already in work cannot be disturbed except by a legally recognized mode which includes the duty to give a hearing.

There is still a long time before the people would be able to have a right to work and till then, a large percentage of the population is forced to languish in poverty.

Equal pay for equal work

The Covenant on Economic, Social and Cultural Rights under Article 7 (a) lays down that remuneration which provides all workers, as a minimum with; I) fair wages and equal remuneration for work of equal value without distinction of any kind in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. The Indian Constitution

also in Directive Principles of State Policy\(^{484}\) provides ‘equal pay for equal work for both men and women’. However this provision has been used to enforce equality of pay generally. The Supreme Court held in **Randhir Singh v/s Union of India\(^{485}\)** that although the principle of equal pay for equal work has not been expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal. This right can be enforced in cases of unequal scales of pay based on irrational classification. Following this, in the **Frank Anthony case\(^{486}\)** the Court struck down Section 12 of the Delhi School Education Act as unconstitutional on the ground that it was violative of Article 14. The Court held that the teachers and employees of Frank Anthony Public School are entitled to parity in pay scales and other conditions of services with those available to their counterparts in government schools.

Article 39 (d) has also been relied upon to invalidate the difference of payment between the permanent and temporary employees or even regular and casual employees so long as they perform similar though not identical work.\(^{487}\) In another case it has been held that the daily rated casual labourers who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers.\(^{488}\) However the court has also held that Article 39 (d) draws its support from Articles 14 and 16 of the Constitution and whatever may be justified as reasonable classification under those provisions cannot be shot down under Article 39 (d).\(^{489}\)

\(^{484}\) Article 39 (d). Constitution of India.


\(^{489}\) **Supreme Court Employees’ Welfare Assn v. Union of India** (1989) 4 5CC 187.
differ on the basis of educational qualifications. The Court has held that the doctrine of equal pay for equal work is not an abstract doctrine; it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post.

**Rights of Women**

Women’s issues have been increasingly brought before the Court with the growth of women’s movement and investigative journalism exposing harassment for dowry, rape, sexual harassment and discrimination. It is widely perceived that investigation into crimes against women has been unsatisfactory and in some cases even the judges have shown gender bias such as the Bhanwari Devi rape case. However the court is now seen to be taking up these issues more actively. The Supreme Court has held that human rights are derived from the dignity and worth inherent in the human person and democracy, development and respect for human rights and fundamental freedoms are interdependent and has mutual reinforcement. The human rights for women, including the girl child are, therefore, inalienable, integral and an indivisible part of universal human rights. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights.

The Supreme Court has laid down broad guidelines for the assistance of rape victims including legal assistance, anonymity, compensation and rehabilitation of rape victims and directions have been issued to the National

---

Commission for Women to evolve a scheme for providing adequate safeguards to these victims. 493

In a significant judgement, in a Public Interest Litigation brought before the Court, the Court has held that the rights of the working women include the right to work with dignity and right against sexual harassment at work places. 494 Sexual harassment of women at workplace constitutes violation of gender equality and right to dignity which are fundamental rights. Taking note of the fact that existing civil and penal laws in India did not provide adequate safeguards against sexual harassment at workplace, the court laid down the guidelines to be followed by every employer including the setting up of a Complaints Committee to ensure prevention of sexual harassment. However in practice, the judgement has not been followed in its letter and spirit. Four years after the passing of the judgement, still no legislation has been enacted though many draft bills are doing the rounds and while the Government Departments are following the guidelines only in name, most of the private companies are not even aware of their existence. Another Public Interest Litigation 495 arising out of harassment of a research student by her guide has been filed in the Supreme Court where the Supreme Court has asked the State governments to file their affidavits indicating the action taken in compliance with the directions issued by the Court in Vishaka’s case. While most of the States have filed affidavits indicating the amendments made in the rules, none of them have been able to show whether the amendments have actually been carried in practice and whether anything is being done in respect of the private sector.

493 Delhi Domestic Working Women Forum v. Union of India (1995) 1 SCC 14; see also Bodhisattwa Gautam v. Subha Chakraborty (1996) 1 SCC 490: AIR 1996 SC 922 where the court held that rape is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, namely, the Right to Life contained in Article 21. Also see Chairman, RN. Board v. Chandrima Das (2000)2 SCC 465: AIR 2000 SC 988.
495 Medha Kotwal v. Union of India WP (Civil) of 2001.
In another, public interest litigation the court has pronounced on the rights of prostitutes to enter the social mainstream. The Court held that the customary practice of Devdasis, Jogins’ and Venkatasins prevalent in the States of Andhra Pradesh, Karnataka and Maharashtra being the practice of prostitution is void under Article 13 and is therefore punishable. The Court observed that though the pleadings related to rehabilitation of the children of prostitutes, the question of eradication of prostitution i.e. the very source of the evil itself could be gone into in the PIL with a view to do complete justice under Article 142.  

The Rajasthan High Court however declined to entertain a Public Interest Litigation filed for seeking directions to prevent a girl of 16 years from taking deeksha of Jainism on the ground that it would be an interference with religious freedom. The Court has condemned the practice of child marriages in a Public Interest Litigation moved for a direction to stop the marriages which were to be performed in violation of the Child Marriages Restraint Act, 1929.

The Supreme Court has entertained a Child Marriages Restraint Act, 1929 regarding the widely prevalent practice of female foeticide and has issued detailed interim directions. The Court is continuing to monitor the progress made in the said case. This judgement appears to have at least woken up the State Governments, perhaps out of fear of consequences of not complying with the directions of the court and some action does seem to be taking place. At the same time, the Court has disposed of a PIL filed on the introduction of a method of

---

499 CEHAT v. Union of India
non-surgical sterilisation taking note of the undertaking by the Government of India not to go ahead with its use: 500

The Court has dealt with issues of people changing their religion for getting married again501 but the Court dismissed a public interest litigation where the petitioners sought to challenge the personal laws as being inconsistent with the Fundamental Rights and therefore void under Article 13 of the Constitution.502

**Right of release and rehabilitation of bonded labour**

In India, the bonded labour system continues to be the most pernicious form of human bondage. Under such system a worker continues to serve his master in consideration of a debt obtained by him or his ancestors. Bondage can be intergenerational or child bondage or loyalty bondage or bondage through land allotment. While the Constitution in Article 23 (1) prohibits ‘begar’ and other similar forms of forced labour,503 it was only in 1976 that the Bonded Labour System (Abolition) Act, 1976 was passed to provide for abolition of bonded labour system with a view of preventing the economic and physical exploitation of the weaker sections of the people. After the act came into force, bonded labour system has been abolished at least on paper and the practice of bonded labour has been made punishable.

The Court in a series of decisions has broadened the scope of ‘bonded labour’ and tried to ensure implementation of the Act in the PILs that have come

---

500 All India Democratic Women’s Association and others v. Union of India 1998 (3) Supreme 138.
502 Ahmedabad Women Action Group (AWAG) v. Union of India with Lok Sevak Sangh v. Union of India with Young Woman Christian Association v. Union of India IT 1997 (3) SC 171.
503 Also see Articles 39, 41 and 42 of the Constitution of India.
before it. In the Asiad WorKels case\(^{504}\) where non-payment of minimum wages to construction worKels was successfully challenged, among others for the violation of Article 23 of the Constitution, the Supreme Court, after an elaborate discussion on the background, philosophy and scope of that article, held that the prohibition against begar is a general prohibition, total in its effect. The Court held that all unwilling labour is forced labour whether paid or not and is therefore prohibited. Moreover where someone works for less than the minimum wages the presumption is that he is working under some compulsion which may be either the result of physical force or of legal provisions or of want, hunger and poverty.\(^{505}\)

In *Sanjit Roy v/s State of Rajasthan*\(^{506}\) the Court invalidated that provision of the Rajasthan Famine Relief Works Employees Act, 1964 which exempted the application of the Minimum Wages Act, 1948 to the employment of famine relief works. The law laid down in these decisions was fully endorsed by the Court in *Bandhua Mukti Morcha case*\(^{507}\) where the Court declared bonded labour to be a crude form of forced labour prohibited by Article 23. The Bandhua case was the first major case in which the Act was directly involved. The matter was filed praying for the identification, release and rehabilitation of hundreds of bonded labourers working in the stone quarries of Haryana. The Court going beyond the mere words of the Act defined bonded labour which was defined by economic hardship and issued 21 directions to the Haryana government. The Court has continued to monitor the implementation of its directions and also appointed a number of Commissions for inquiry in the matter. Unfortunately,

---


\(^{507}\) Supra 54.
most of the directions of the Court remained unimplemented. In 1992 the Court in recounting the history of the matter, expressed its shock at the fact that there was not the slightest improvement in the conditions of the workers of the stone quarries.\textsuperscript{508} Even now directions are issued depending on the issues which are brought before the Court.\textsuperscript{509}

The Court has also held that the failure of the State to identify the bonded labourers, to release them from their bondage and to rehabilitate them as envisaged by the Bonded Labour System (Abolition) Act, 1976 violates Articles 21 and 23.\textsuperscript{510} In this case a letter was sent to the Supreme Court stating that many bonded labourers who were released pursuant to the Bandhua case had returned home but were awaiting their rehabilitation even after six months of their release. The Supreme Court directed the appointment of Vigilance Committee for the rehabilitation of these starving people. Public Interest Litigation’s have also been brought on the issue before the courts for the liberation of bonded labourers in Madhya Pradesh\textsuperscript{511}, Tamil Nadu\textsuperscript{512}, Bihar\textsuperscript{513} and other states.

The court’s willingness to take up the right of the bonded labourers to be released and rehabilitated has helped in the implementation of the Act but only to a limited extent. The basic problem, however, in the implementation of this Act is that emphasis is being placed only on the identification, release and rehabilitation of bonded labourers. The real emancipation of bonded labourers would be achieved not by cuffing them off from the life support system but rather by allowing them to work and ensuring them a reasonable wage and better living

\textsuperscript{508} Bandhua Mukti Morcha v. Union of India AIR 1992 SC 38.
\textsuperscript{509} Bandhua Mukti Morcha v. Union of India (2000)9 SCC 322; (2000) 10 5CC 104
\textsuperscript{511} Mukesh Advani v. State of Madhya Pradesh AIR 1985 SC 1363.
\textsuperscript{512} HP. Sivaswarny v. State of Tamil Nadu 1983 (2) SCAIY 45.
conditions.\textsuperscript{514} Practice of bonded labour is still rampant in many parts of the country in myriad forms and something concrete may be achieved only when judicial activism on the issue is backed by political will.

**Rights of children**

A number of Public Interest Litigation’s have also been filed bringing up issues affecting the children. Though a number of Acts contain specific provisions for the protection of the children\textsuperscript{515} and India is also a signatory to the Convention on the Rights of the Child, the children in India still face exploitation either as child labour, domestic workers or through sexual exploitation. The Constitution also contains specific provisions aimed at the welfare of children. Reference may be made to the Fundamental Right contained in Article 15(3) of the Constitution which provides that \textit{nothing in the Article shall prevent the State from making any special provision for women and children} and Article 24 of the Constitution which provides for prohibition of children in factories, etc and reads as,

\textit{“No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”}

This has to be read in conjunction with the Directive Principles of State Policy which also refer to the rights of the children.\textsuperscript{516} Thus while employment of

\textsuperscript{514} Parmanand Singh, “Protection of Human Rights: Through Public Interest Litigation in India”, \textit{42JILI} 263, p.274.


\textsuperscript{516} Article 39 (e) of the Constitution of India provides that “the State shall direct its policy towards securing that the health and strength ...... and the tender age of children are not abused and that
children below the age of 14 years in any factory or mine or other hazardous occupation is forbidden, in view of the socio-economic realities, the Constitution maKels did not prohibit the employment of children generally. Till the Asiad WorKels case\textsuperscript{517}, the general understanding was that the right secured by Article 24 will be hardly effective in the absence of legislation prohibiting and penalizing its violation. However, in that case the Supreme Court clearly stated that Article 24 ‘must operate proprio vigore’ even if the prohibition laid down in it is not ‘followed up by appropriate legislation’. Accordingly the Court held that though construction work was not included among the hazardous industries in the Employment of Children Act, 1938\textsuperscript{518}, construction work is ‘plainly and indubitably a hazardous employment’ prohibited by Article 24. Therefore, no child below 14 can be employed in construction work.\textsuperscript{519} This position has been reiterated in Salal Hydro Project case\textsuperscript{520} where again the Court held that employment of children below 14 in construction work violates Article 24.

Public Interest Litigation on child labour came directly in 1980s in response to a large number of news reports exposing the exploitation of children in fireworks and match factories of Sivakasi in Tamil Nadu and in carpet industries in Mirzapur, Uttar Pradesh. It was the investigative journalism combined with public interest litigation’s that led to the passing of the Child

\begin{footnotes}
\item[517] Supra 330.
\item[518] Repealed and replaced by the Child Labour (Prohibition and Regulation) Act, 1986.
\item[519] Supra 330, p.246.
\item[520] Supra 331.
\end{footnotes}
Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children in hazardous industries.

In response to public interest litigation, the Supreme Court appointed a commission of inquiry on child labour in carpet industries in Uttar Pradesh. The report indicated high incidence of child labour. With the help of local administration these children were released.\(^{521}\) In 1986 a major public interest litigation was brought before the Supreme Court complaining that thousands of children were employed in match factories in Sivakasi, Tamil Nadu.\(^{522}\) It was contended that the children were exposed to fatal accidents occurring frequently in the manufacturing process of matches and fireworks. The Court directed the State Government to enforce Factories Act and to provide facilities for recreation, medical care and basic diet to the children during working hours and facilities for education. The Court also advocated a scheme of compulsory insurance for both adults and children employed in hazardous industries. Every employee had to be insured for a sum of Rs.50,000. A committee was also appointed to monitor the compliance with the directions of the Court. Though the Child Labour (Prohibition and Regulation) Act, 1986 has banned the employment of children in manufacture of matches, yet the court permitted child labour in the process of packing because “tender hands of the young workers were more suitable to the task”. The court here failed to recognise that manufacture and packing of matches is inseparable. Even the few directions that the court gave have not been implemented as is borne out by the incidents of child labour that are occasionally brought to light. In its final judgement delivered in 1996 the Supreme Court directed the offending employer of child labour in match factories to pay Rs.20,000 which would then be deposited in a Child-Labour- Rehabilitation-cum-

\(^{521}\) Bandhua Mukti Morcha v. Union of India 1986 (Supp) 5CC 553.
The children illegally employed would receive education at the cost of the employer. Despite five years of the judgement having been passed, most of the States have not done much in this direction or towards ameliorating the conditions of the child labourers.

Another Public Interest Litigation on child labour brought forward the condition of children forced into employment in carpet-weaving centres in the State of Uttar Pradesh. The Court emphasized the importance of education so as to empower the children to retrieve them from poverty and develop basic abilities, skills and capabilities to live a meaningful life for economic and social empowerment. The Court further issued directions for evolution of principles and policy for elimination of employment for children below the age of 14 years.

In a case of children procured as labour subsequently found to be dead or missing. The State was directed to pay compensation with detailed instructions being issued regarding mode of investment of the said money, payment of interest and release of the principal amount.

Besides the issue of child labour, early Public Interest Litigation cases focussed on the children in prisons. The Supreme Court on the basis of a news report about sexual exploitation of children by hardened criminals in Kanpur jail directed the District Judge, Kanpur to visit the jail and submit a report. The report confirmed the crime of sodomy committed against the children. The court directed the release of children from jail and their shifting to children’s home though no punishment was imposed on the administrators of the jail. Another Public Interest Litigation exposed the inhuman conditions of children in Tihar

---

523 M.C. Mehta v. State of Tamil Nadu 1996(1) SCALE 40: (19%) 65CC 756.
525 People’s Union for Civil Liberties v. Union of India (1998) 8 SCC 485.
Jail, Delhi. Sexual exploitation of children in Orissa jails also formed the subject matter of PIL.

A Public Interest Litigation on juveniles in jails was filed by a journalist in 1985 for release of children below the age of sixteen and for information on the number of such children and to ensure that adequate facilities were provided for the children in the form of juvenile courts, homes and schools. The court passed orders from time to time which remained largely unimplemented. With the passage of the Juvenile Justice Act, 1986, the court’s attention was diverted to the implementation of the Act. Being disappointed with many adjournments and repeated non-compliance of judicial directions the petitioner tried to withdraw the petition. Adopting an innovative procedure, while the Court allowed the petitioner to withdraw from the matter, the matter was pursued by the Supreme Court Legal Aid Committee. In its final order, the Court stressed the need to create juvenile courts, homes and schools. A committee of advocates was appointed to prepare a draft scheme for the proper implementation of the Act. The result is that juveniles are no longer lodged in jails.

The Court has laid down elaborate guidelines in a number of Public Interest Litigation’s on the issue of adoption of children by foreigners and to check the malpractices in this regard.

527 Sanjay Suri v. Delhi Administration 1987 (2) SCALE 276.
528 M.C. Mehta v. State of Orissa WP (Cr.) 1504 of 1984 (unreported)
529 Sheela Barse v. Union of India AIR 1986 SC 1773.
530 Sheela Barse v. Union of India AIR 1988 Sc 2211.
531 Supreme Court Legal Aid Committee v. Union of India (1989)2 5CC 325. On 17.3.1989, the Supreme Court again issued directions to every district judge to report to the court as to the exact position of juveniles in jails, setting up of juvenile homes, special homes and observation homes. In Supreme Court Legal Aid Committee v. Union of India (1989)4 5CC 738, the court expressed its satisfaction that except in Andaman and Nicobar, a Union Territory, no state had kept the children in jails.
While Public Interest Litigation’s involving prisons have provided good results, PILs in the area of child labour have been without much effect. Some countries still continue to refuse to purchase goods made through the employment of child labour. However the real solution lies not in the displacement of child labour and pay compensation to them but in launching a massive developmental programme especially in irrigation so that the land owning parents experiencing economic recovery might withdraw their children from exploitative labour conditions. Problem of child labour cannot be eliminated by judicial activism alone in the face of capitalist development and global power relations. While the first part of this statement may be open to debate with some groups taking the view child labour needs to be done away with totally without finding lame excuses, the fact remains that condition of children is still far from satisfactory and there has to be a comprehensive plan to deal with child labour which takes into account the needs of the child and the family alike.

The court has also had occasion to deal with the rights of the persons with disabilities, out sees from dams and it has held that the dalits and tribals are entitled to economic empowerment.

Right to suicide or to die

The issue of right to die has also attracted the attention of the Supreme Court. While there has been much debate all over the world over regarding the

---

533 National Federation of Blind v. Union Public Service Commission AIR 1993 SC 1916 where the court directed the IJPSC to allow a blind student to take examination and questions should be available in braille.
right to die, the issue has come into perspective with the renewed debate on euthanasia or mercy killing. Eminent persons in India and USA have advocated euthanasia.\(^5\) In India, the pro-euthanasia activists got a boost with the pronouncement of the Supreme Court on the right to commit suicide.\(^6\) Earlier the Bombay High Court\(^7\) had struck down Section 309 of the Indian Penal Code\(^8\) which lays down the punishment for attempt to commit suicide by a person as unconstitutional on the ground that it is violative of Article 21 of the Constitution. The Court held that the right to live includes the right to die and everyone should have the freedom to dispose of his life as and when he desires. On the other hand, the contrary view was taken by some other High Courts that right to life does not include the right to die\(^9\) and that the section is not ultra virus and does not offend Articles 19 and 21 of the Constitution.

The Supreme Court in P. Rathinam's case\(^10\) seeking to “humanize the criminal law” held that a person has a right to die and declared Section 309 of the IPC unconstitutional. The “right to life” under Article 21 includes the “right not to live” i.e. the “right to die or to terminate one’s life”. A person cannot be forced to enjoy the right to life to his detriment, disadvantage or dislike. The Court referring to the fact that the Law Commission also in its 42\(^{nd}\) Report recommended deletion of this section thus approved the decision of the Bombay High Court.\(^11\) The Court observed that Section 309 of the IPC is a cruel and irrational provision and may result in punishing a person again who has suffered

\(^5\) See the Hindustan Times (Sunday Magazine) 25.10.1998; The Times of India 17.3.1999.
\(^6\) P. Rathinam v. Union of India (1994) 3 SCC 394.
\(^8\) It reads: Attempt to commit suicide- Whoever attempts to commit suicide and does any act towards the Commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
\(^10\) Supra 363.
\(^11\) Supra 364.
agony and would be undergoing ignominy because of his failure to commit suicide. The Court made it clear that an act of suicide could not be said to be against religion, morality or public policy and an act of attempted suicide has no benefit effect on society. This decision was received with mixed reaction. The decision raised many strange issues. First, in traditional societies in which individual decision matters little, it will open some women to barbaric and inhuman pressure for becoming ‘sati’. Secondly, suicide owing to frustration, love, examinations or failure to get a job or even good job or promotions in service will raise many social problems. Is individual capable of taking decisions to end his life? Does he not owe a responsibility towards the society to overcome these human frailties and live for it? These questions still remain unsolved. Moreover the enunciation of the right to die appeared to be a little illogical because most of the rights referred to under Article 21 are all concerned with facilitating and enhancing the enjoyment of right to life itself. All these rights guarantee survival and happy propagation of human race. In contrast the right to die that implies the right to self-destruction and extinction of the human race itself has nothing in common with these rights.

Only two years later, a five judge bench of the Supreme Court in 1996 reversed the earlier judgement of a two judge bench and declared that Section 309 of the IPC is constitutional and therefore attempt to commit suicide or its abetment is a penal offence. On the question whether “right to die” could be included in Article 21 of the Constitution, the Court observed that Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in right to life. To give meaning and content to the word ‘life’ in Article 21, it has been construed as life

with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is therefore, inconsistent with the continued existence of life resulting in effacing the right itself.

The Court observed that the ‘right to life’ including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the ‘right to die’ with dignity at the end of life is not to be confused or equated with the ‘right to die’ an unnatural death curtailing the natural span of life.

The Court further added that the right to life was a natural right embodied in Article 21 but suicide was an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life. When a man commits suicide, he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the ‘right to life’ under Article 21. The significant aspect of ‘sanctity of life’ is also not to be overlooked. Article 21 which guarantees ‘protection of life’ cannot be construed so as to read therein ‘extinction of life’ or ‘right to die’ whatever may be the philosophy of permitting a person to extinguish his life by committing suicide.

The Court also held that there is no similarity in the nature of other rights to provide a comparable basis to hold that the ‘right to life’ includes the ‘right to die’. Under Article 19, the fundamental right is of a positive kind though they have been held in certain decisions to include the negative aspect as well i.e. the right to do an act includes also the right not to do an act in that manner. However, if the right has the negative aspect of not being deprived by others of its continued
exercise, for example, the right to life or personal liberty, it does not flow there from that the converse positive act but also flows to permit expressly its discontinuance or extinction by the holder of such right.

Whatever be the merits of the debate, the earlier view\textsuperscript{545} was more humane since it is only in unfortunate circumstances when life is a burden that one decides to terminate his life, Moreover, a person who fails in the attempt to commit suicide could be punished for the attempt to commit suicide which would entail further misery for the person.

A number of rights have thus been ‘evolved’ by the courts over the past two decades and directions issued to make the other rights meaningful leading to an evolution of human rights jurisprudence international in its scope but developed through processes specific to India. Besides these rights which may be called the substantive rights and are essential for the development of the personality of an individual, the courts have stressed a number of procedural rights such as the rule against bias, right to fair hearing, to examine witnesses in his presence and have emphasized the necessity of recording of reasons which enable the higher courts to assess the reasons which actuated a decision. The substantive and procedural rights have to be read as two sides of the same coin and together they are geared to provide justice to the masses.

6. (iv) LOCUS STANDI : THE PATTERN OF RULINGS IN INDIA

Article 32 confers a unique, unprecedented and extraordinary jurisdiction to the Supreme Court on issue directions, orders or writs for the enforcement of the Fundamental Rights. Article 32 itself guarantees the right to move the

\textsuperscript{545} Expressed in \textbf{P. Rathinam case}, supra 364.
Supreme Court by 'appropriate proceedings\textsuperscript{546} for the enforcement of the Fundamental Rights.

Article 226 of the constitution gives to every High Court, the power to issue orders or writs 'for the enforcement of the Fundamental Rights guaranteed under Part III and for any other purpose. Article 227 empowers the various High Courts with a power of superintendence over all Courts and Tribunals in the territories in relation to which they exercise jurisdiction.

In India, the canvas for standing is very wide. Section 9 of the Code of Civil Procedure, 1908\textsuperscript{547} gives a very wide jurisdiction to the Courts to try 'all suits of a civil nature except suits in which the given courts cognizance is either expressly or impliedly barred.

The traditional rule of \textit{Locus standi} is that a person, who has suffered a special legal injury by violation of his legal right or legally protected interest, can only bring an action for judicial redress. The doctrine of \textit{Locus standi} never had a fixed content. This doctrine had been assuming new contents, from time to time, through legislative or judicial process to meet the demands of the particular situations.

\textsuperscript{546} It is submitted that the requirements of 'appropriate proceedings' in Article 32 have, to a certain extent, faded in relation to public interest litigation in India. There are, and have been certain distinguished, unprecedented and unique developments in this area. The Court is, and has been, entertaining letters, post-cards, telegrams and even news-paper cuttings espousing the cause of a socially or economically handicaps as writ petitions under Article 32. This is termed as 'epistolary jurisdiction' by Upendra Baxi in his article; Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India", \textit{Delhi Law Review}, Vols: 8 and 9, 1979-1980, p. 91, p. 102.

The process of liberalisation of *Locus standi* in India has gone through, more or less, the same stages as the 'standing to sue' has undergone in United States.\(^5\)

The existence of acute inequality in the bargaining power among the people in India has an important bearing on *Locus standi*. 'Access to justice' remains an illusion for those who are having no or at the most very little, bargaining power for the following reasons:

---

\(^5\) The stages of the process of liberalization can be studied under the categories dealing with specified situations:

(a) Article by any Person: There are two situations firstly, in quo-warranto proceedings the Courts have ruled that every citizen has a sufficient interest in the conduct of public affairs. Therefore, any citizen can challenge the authority of a public officer to hold his post, even though his personal rights are not directly affected. See *G.D. Karkare v. T.L. Shevde*, AIR 1952 Nag. 330; *Maseh Ullah Shah v. Abdul Rehman Sufi*, AIR 1953 All. 193.

(b) Actions by Rate-payers, Tax payers: The right of the rate-payers and Tax-payers to control the deliberations of the corporations have been recognized. See, *K.R. Shenoy v. Udipi Municipality*, AIR 1974 S.C. 2177 (right of a ratepayer to object to the giving of approval by the municipality for construction of cinema in a residential locality was recognized); *N.N. Chakrawarty v. Corporation of Calcutta*, AIR 1960 Cal. 102; *R. Vardarain v. Salem Municipal Council*, AIR 1973 Mad. 55 (Tax payers allowed to approach the Court to control the deliberations of the municipal corporation's meetings or to challenge the decision to erect a statute).

(c) Action by a Member of Class and Residents: See *Bril Pershad v. Rama Spethamma and others*, AIR 1983 A.P. 118 (residents allowed to challenge the transfer of land by municipal corporation to a school); *Yellappa Ravalu v. Corp. Of City of Belgaum*, AIR 1983 NOC 56 (Kant) resident allowed to challenge the grant of lease of municipal and meant for parks by Municipality for the construction of theatre); *Municipal Council, Ratlam v. Vardhichand*, AIR 1980 SC 1622 (the public-minded citizen-cum-resident was allowed to compel the public authority to clean the slum area by writing to the Magistrate.); *Sunil Batra (II) v. Delhi Administration*, AIR 1980 SC 1579 (the right of one prisoner to move the Court in regard to the alleged torture of another prisoner was recognized); *Akhil Bharatiya Soshit Karanchari Sangh (Rly) v. Union of India*, AIR 1981 SC 298 (the unorganized union was allowed to challenge certain circulars of the Railway deptt); *Fertilizer Corpn. Kamgar Union, Sindri v. Union of India*, AIR 1981 SC 344 (Held that members of a workers union could approach the Court on a matter affecting their jobs and livelihood); *P.S.R. Sadanathan v. Arunachalam*, (1980) 3 S.C.C. 141 (recognized the right of the brother of victim to pursue criminal proceedings against the accused, when the State had refrained from pursuing the case for reasons which do not bear on the public interest but are prompted by private influences and other extraneous considerations).
a) Social oppression, exploitation and repression makes illusory, the right to complain against societal tyranny. For example, in the case of landless labour, brick-kiln workers or tribal in forest—though not physically incarcerated, they are so terror-stricken that it is just unrealistic to expect them to approach the Court for redress;

b) The reasons which compel the acceptance of degrading jobs, that endanger the health and life, are economic in nature. The economic deprivation prevents such labour from asking for a better deal in a labour surplus economy. For instance, adivasis losing limbs and lives while collecting motels on firing range in Madhya Pradesh\textsuperscript{549}, or State of workers in slate and pencil factories dying of sclerosis in Mandsaur.\textsuperscript{550} This economic privation has kept them from moving the Courts;

c) Ignorance and illiteracy make access to judiciary and other governmental institutions, a stark impossibility. For instance, bonded labour, child labour, women workers, prisoners, under-trials and rural poor are completely ignorant of the duties of the State towards citizens like them, as they are of the powers, procedures and concerns of the Courts.

d) As the society modernises, the nature and extent of 'injury' changes. Injury to a person is no longer direct, dramatic or substantial. The ultimate injury is most often generalized and diffused, affecting all uniformly. The consequences of such injury are that no person can say that he has been injured to an extent quantitatively or qualitatively greater than the average

\textsuperscript{549} Sudip Mazumdar v. State of Madhya Pradesh (1983) 2 SCC 258
citizen. For example, deforestation due to collusion among officers of State and rapacious contractors leads to, more and more frequent, lethal landslides and increased incidence of flood; and in case of adulteration of food, drugs and other goods, health and lives of consumers is, more or less, equally endangered. In neither case the injury is direct, dramatic or substantial.

If such be circumstances, should the Court insist that only direct victims shall have standing, then it would foreclose the relief altogether. The narrow interpretation of 'injury is irrational or inefficient because of the fact that the effects of the impugned action and subsequent litigation are not really confined to the persons at either end of the right-remedy pattern. Should the Court not intervene, in such situations, at the behest of genuine and bonfide public-minded citizen?

These questions boggled the mind of judiciary for quite a long time. The resulting action is 'Public Interest Litigation'. The foregoing reasons are the jurisdictions for not imposing technical rules of *locus standi* as these rules would cripple the judicial function and render its exercise difficult where it is needed most.

Most importantly, the doctrine of *locus standi* has acquired a new dimension on account of the construction placed by the Supreme Court on the provisions of Article 21. \(^551\) The Supreme Court in *Maneka Gandhi v/s Union of India* \(^552\) gave a neat and tidy direction to the diffused understanding of the

---

551 India Constitution, Article 21 providers "No person shall be deprived of his life or personal liberty except according to procedure established by law".

552 AIR 1978 SC 597. Per Bhagwati, J. It is submitted that here the norm signifies ideals which must guide legal development and administration, as basic moral quality in law which prevents a total separation of the 'is' from the 'ought'
provisions of Article 21. The Court held that "the procedure prescribed by law must be fair, just and reasonable not arbitrary, oppressive or fanciful." In a series of cases in the Post-Maneka era, the Supreme Court in its quest for justice to weaker sections created new 'positive rights' as aspects of Fundamental Rights. The Court, then, proceeded to enforce those rights by directing the State to create necessary conditions for the enjoyment of those rights. In this evolutionary process, right to speedy trial, right to legal aid, right to human dignity, right to bail, right against torture emerged as components of Fundamental rights in the light of Directive Principles of State Policy.

The court, imbued with this flavour, gave an extended meeting to 'Locus standi' in Sunil Batra v/s Delhi Administration. There is organic metamorphosis in the role of Court as the sentinel on the qui vive to the role of the 'pro bono publico', i.e. the protector of a naturalist 'dharma' in State of Madras v/s V/SG. Row.

In a series of bases the Court has laid down the place of doctrine of locus standi vis-a-vis public interest litigation in Indian jurisprudence. The opinions of the Courts can be produced in the form of propositions as follows:

a) Having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and

---

554 For example, Hussainara Khatoon v. State of Bihar AIR 1979 SC 1360.
555 Hoskot v. State of Maharashtra AIR 1978 SC 1548
556 Frances Coral Mullin v. Delhi Administration, AIR 1981 SC 746
557 For example, Hussainara Khatoon v. State of Bihar, Supra n. 5; Khatri v. State of Bihar (1981) 1 SCC 627
558 Sunil Batra v. Delhi Administration, AIR 1978 SC 1675
559 Sunil Batra v. Delhi Administration, AIR 1980 SC 1579
560 AIR 1952 SC 196
ignorance obstructing and impeding accessibility to the judicial process, a blind adherence to the traditional rule of *locus standi* would result in closing the doors of justice to the poor and deprived sections of the community. It is, therefore, necessary to evolve a new strategy by relaxing this traditional rule in order that justice may be accessed by the lowly and the lost.\(^{561}\)

b) In a society where freedom suffer from atrophy, and activism is essential for participative public justice, some risks have to be taken and more opportunities are to be opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding *locus standi*.\(^{562}\)

c) When the Law is increasingly used as a device of organized social action to bring about socio-economic changes then new categories of collective, social and diffused rights and duties are created. In such circumstances the individualist doctrine of *locus standi* has to be liberalized to give effect to such meta-individual rights.\(^{563}\)

d) The procedure is but a hand-maiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The court would, therefore, treat the letter of the public-spirited individual, espousing the cause of socially or economically

\(^{561}\) Per Bhagwati J. in *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 at p. 1482.


\(^{563}\) Per Bhagwati J. in *S.P. Gupta and Others v. President of India and Others*, AIR 1982 SC 149 at p. 191.
disadvantaged persons, as a writ petition and act upon it. The Court would cast aside the technical rules of procedure in such cases.\textsuperscript{564}

e) Any member of the public having sufficient interest can maintain an action for public injury arising from –
   a. Breach of public duty; or
   b. Violation of any provision of the Constitution;
   c. Violation of any provision of the law; seek an enforcement of such public duty, and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective.\textsuperscript{565}

f) Any member of the public can maintain an application to the Court seeking judicial redress for the legal injury or wrong caused to a person or a determinate class of persons by reason of:
   a. Violation of any constitutional right;
   b. Violation of any legal right; or
   c. Any burden imposed –
      i. In contravention of any constitutional provision;
      ii. In contravention of any legal provision;
      iii. Without authority of law;
         Or

\textsuperscript{564} \textit{Ibid}, p.189
\textsuperscript{565} \textit{Ibid}, p. 194
or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons by reason of –

i. Poverty;
ii. Helplessness;
iii. Disability; or
iv. Socially or economically disadvantaged position is unable to approach the Court for relief.\(^{566}\)

g) What is 'sufficient interest' to give standing to a member of the public would have to be determined by the Court in each individual case.\(^{567}\)

h) Public enterprises are owned by people and those who run them are accountable to the people. Therefore, if public property is dissipated, any member of the public, directly interested and affected would have a right to complain to the Court of the infraction of public duties and obligations.\(^{568}\)

i) The issues of 'access to justice' must be considered in case of shifting of the centre of gravity from the traditional individualism of *locus standi* to the community orientation of public interest litigation. Because at issue is the coming age of that branch of law bearing on community

\(^{566}\) *Ibid*, p. 188.
\(^{567}\) *Ibid*, p. 192
actions and the Court's power to force public duties to implement specified plans in response to public grievances.\textsuperscript{569}

ej) The individual who moves the Court for judicial redress on behalf of socially or economically disadvantaged persons, must –

a. Be acting bonafide with a view to vindicate the cause of justice;
b. Not be acting for private gain or private profit;
c. Not be acting out of political motivation or other oblique consideration; or
d. Not be a way-farer, meddlesome-interloper or busy-body.\textsuperscript{570}

k) A member of public with sufficient interest cannot maintain an action challenging the legality of an act or omission of public authority causing-

a. A public injury; and
b. A specific injury to an individual or to a class or group of individuals, if such an individual suffering special injury does not wish to claim any relief and accept such act or omission willingly and without protest.\textsuperscript{571}

As a natural consequence of the liberalization of \textit{locus standi} rule and the increasing willingness of the Judiciary in India to render remedial justice to the weaker sections, there is a flood of 'Public Interest Litigations' in the Supreme Court and the High Courts. These cases provide rare insights into the working and the thinking of the Court and the judges who preside over it. Moreover, these

\textsuperscript{570} Per Bhagwati, J. in \textit{S.P. Gupta and Others v. President of India and Others}, AIR 1982 SC 149 at p. 189.
\textsuperscript{571} \textit{Ibid}, p. 195
cases also provide useful insight into our social and political system. These cases raise the issues of killing of peasants in the police encounters in Tamil Nadu and Andhra Pradesh; the demolition of huts and dwellings of pavement and basti-dwellers in Bombay and Delhi; the illegal confinement of undertrials in prisons; the torture of prisoners; corruption and drug trafficking in Tihar jail, the bonded labour; child labour in Sivakasi; inhuman conditions in Agra-Home; trafficking of women; and other grievances. Most of the cases have been instituted either by the concerned parties directly or by social workers, lawyers, journalists, legal academics, social or democratic organizations, or legal aid committees. In some cases, the Court has taken up the matter suo moto.

An analysis of these issues raised before the Court would show that the Courts have been quite liberal in granting standing to the persons coming from the different fields. It is apparent that the Court was more concerned with the kinds of issues raised than with the persons bringing those cases to the Courts. This liberal trend is all the more apparent from the fact that the Courts, especially the Supreme Court, have admitted the letters, post-cards, telegrams and even newspaper cutting as writ petitions under Article 32. The court has justified such expansion of its judicial power. The Court has reasoned that the Courts must innovate new methods and strategies to remedy injustices by providing access to justice to large masses of people, who are denied their basic human rights.

6 (v) THE OPERATIONALISATION OF PUBLIC INTEREST LITIGATIONS

Public interest litigation (PIL) was a revolutionary concept initiated with a laudable object. In the words of the Supreme Court of India, it was aimed at “fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose
fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard.”

This led to the dismantling of the traditional concept of *locus standi*. The courts could be approached by persons espousing the case of the underprivileged, who were by themselves not in a position to access the courts. The rules of procedure in technicalities were loosened, justice became flexible and the courts became accessible. As a result, one has seen a surge in public causes being taken up in various High Courts as well as in the Supreme Court. The use of public interest litigations in matters pertaining to the environment, including clear air and preservation of forests, has led to dramatic and palpable improvements in the environment.

A draft ‘Public Interest Litigation Bill, 1997’ was prepared by the Deve Gowda Government of the United Front for putting restraint on the Public Interest Litigation. The Bill proposed that any person or a group of persons approaching the Supreme Court or the High Court by way of public interest litigation was to deposit Rs. 1 Lakh or Rs. 50,000/- respectively, which was to be refunded if the outcome went in favour of the petitioner and confiscated if the petition was not allowed. The Bill confined the Public Interest Litigation to a petitioner who had some direct personal interest in the litigation, except when it was moved on behalf of a “poor person” who’s annual income did not exceed Rs. 6,000. It further provided that public interest litigation should be provided for redressal, only for legal injury to a person or a determinate class of persons, who could not approach the Court due to lack of means or some disability. The Bill
excluded the redressal against “*purely executive action*” of the government from the purview of the PIL.

The proposed *Public Interest Litigation Bill* was criticized as a “*Black Bill***”, aiming at preventing citizens from resorting to public interest litigation and to allow those guilty of financial and other excesses to go scot-free.\(^{572}\) It is submitted that such a measure not only retards the assertion of vindication of people’s right, but also puts a clog on the Court’s power of judicial review, held to be *a basic structure of the Constitution*. If such a measure is enacted into a law, it is most likely that it would not stand the test of judicial scrutiny.

With the expansion of the scope of writ jurisdiction, more and more PIL cases relating to other social maladies came to be filed in the Supreme Court and the High Courts. Doubts and fears have been expressed against the abuse of public interest litigation. The protagonists of conservative legal process have not been happy with this trend and had given it the name ‘Judicial Activism’. The political leaders, many of them, who were hauled up in corruption cases, have criticized this trend. While expanding the scope of the *Locus standi* rules his Lordship Bhagwati, J. (as he then was) expresses a note of caution also. He observed:

> “But we must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bona fide and not for the personal gain or private profit or private motivation or other oblique considerations. The Court must not allow its process to be abused by politicians and other.”

This observation makes it clear that his lordship was aware that this liberal rule of *Locus standi* might be misused for vested interests. It was therefore made clear that in such cases the court will not allow the remedy to be abused.

In **B. Singh v/s Union of India**\(^{573}\) the petitioner, on the basis of a representation of one Ramsarup, filed public interest litigation, addressed to the President, against a person likely to be appointed a judge of the High Court challenging his appointment which was even published in a newspaper. The petitioner nowhere has stated that he has any personal knowledge of the allegations made against the respondent. The Supreme Court held that this was a clear and blatant abuse of public interest litigation filed with oblique motive. The Court held that the PIL filed with reckless allegations and vitriolic statements against judges and persons whose names were under consideration for judgeship must be sternly dealt with. The petitioner is a person seeking publicity and not interested in welfare of judicial system.

In **Guruvayur Devasawom Managing Committee v/s C.K. Rajan**\(^{574}\) a three judge bench of the Supreme Court, with a view of checking the abuse of public interest litigation, re-examined its scope and ambit in detail and reiterated the guiding principles for its exercise. In this case a special leave petition was filed in the Supreme Court by the Management Committee of the temple. The Supreme Court held that public interest litigation cannot be used in solving disputes of private nature. Public Interest Litigation was evolved with a view to render justice to poor, depraved, the illiterate and downtrodden that have either

---

\(^{573}\) AIR 2004 SC 1923

\(^{574}\) AIR 2004 SC 561
no access to justice or had been denied justice. It cannot be used for removing corruptions in a temple.

In T.N. Godavarman Thirumulpad v/s Union of India, the Supreme Court has held that in an exceptional case where bona fides of a public interest litigant are in doubt, the court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing an Amicus Curia to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant.

In Ashok Lanka v/s Rishi Dixit, the Court has held that even in a case, where a petitioner in fact, have moved the court for his personal interest and for redressal of personal grievance, the court, in furtherance of the public interest, may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.

In the case of BALCO Employees Union v/s Union of India, the Supreme Court has made it clear that the public interest litigation is not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in the exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but public interest litigation at the behest of a stranger ought not to be entertained. Such litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach

575 AIR 2006 SC 1774
576 2005 AIR SCW 2676
577 AIR 2002 SC 350
the Court. The decision to disinvest and implement thereof is purely an
administrative decision relating to the economic policies of the State and
challenging the same at the instance of a busy-body cannot fall within the
parameters of the public interest litigation.

The Court has observed that whenever the Court has interfered and given
directions while entertaining public interest litigations it has mainly been where
they have been initiated for the benefit of the poor and the under-privileged who
are unable to come to the Court due to some disadvantage. In those cases also it is
the legal rights which are secured by the courts. However, the public interest
litigation is not meant to be a weapon to challenge the financial or economic
decisions which are taken by the government in exercise of their administrative
powers.

A movement like that of public interest litigation, with great potential for
social change, is bound to provoke strong reactions. Earlier, we have seen how
the politicians attacked the movement alleging that the judiciary was encroaching
upon territories carved out by the Constitution for the Legislature and the
Executive. The movement was criticised by judges and jurists right from the
start. It was the judiciary which launched the movement in this country and
ironically the first shots were fired from within.

It has been said that the judges deciding public interest litigation cases,
have crossed the limits of judicial propriety, to take over the administration which
was beyond the scope of their jurisdiction. The trend of the Courts in awarding
compensatory and exemplary damages against the State was not much liked by
the Executive. It has been said that the Courts have been flooded with public
interest litigation cases in matters which are beyond their control and jurisdiction and it would also add to the arrears of cases in the Supreme Court and the High Courts. The Government was thus moved to bring forth a legislation imposing monetary restrictions on the citizens.

Admittedly, there are some dangers in Public Interest Litigation. Liberalising the rule of *locus standi* and growth of *epistolary jurisdiction* do have some inherent dangers of abuse by vested interests impelled by personal vendetta, media – craze or other dubious motives. It has been held that public interest litigation should not be used for personal gain, political motivation or oblique consideration and that it should be aimed at redressal of genuine public injury.\(^{578}\) However, limited personal interest of the petitioner in the subject-matter does not make a PIL altogether private litigation.\(^{579}\)

It may be stated that the Courts have been very careful in avoiding vexatious and frivolous litigations. At times, the Courts had declined to entertain the petition framed as public interest litigation, since it did not satisfy the requirements laid down in earlier cases.\(^{580}\) It was ruled that the relaxation of the rule of *locus standi* did not give any right to anybody or meddlesome interloper to approach the Court under the guise of a PIL.\(^{581}\)

In the last few years, there have been serious concerns about the use and misuse of public interest litigations and these concerns have been expressed at

\(^{578}\) A.K. Pandey *v.* State of W.B. AIR 2004 SC 280


\(^{580}\) Society for HR and C.L *v.* Union of India, 2004 (4) SCALE 70.

\(^{581}\) S.P. Gupta *v.* Union of India, AIR 1982 SC 149
various levels. The time has come for a serious re-examination of the misuse of public interest litigation.

This misuse comes in various forms. The first is what Justice Prasayat in the case of Ashok Kumar Pandey v/s State of W.B.\(^{582}\) described as “busybodies, meddlesome interlopers, wayfarers or officious interveners who approach the court with extraneous motivation or for glare of publicity.” Such litigation is described as “publicity interest litigation” and the courts have been fraught with such litigation. How else would one describe a public interest litigation filed for “reliefs” such as that the higher judiciary would be provided with private planes and special transport? A petition to this effect was filed by a lawyer practicing in U.P. As could be expected, it was summarily rejected, but not before the gentleman had his day in the sun, however momentary it was. Examples of this kind of litigation are innumerable. No sooner has an event of public interest or concern occurred than there is a race to convert the issue into public interest litigation.

It seems that the misuse of public interest litigation in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which this form of litigation was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the public interest litigation project.

(1) Ulterior purpose: Public in PIL stands substituted by private or publicity. One major rational why the courts supported public interest litigation was because of its usefulness in serving the public interest. It is doubtful, however, if public interest litigation is still wedded to that goal. As we have seen above, almost any

\(^{582}\) AIR 1982 SC 856
issue is presented to the courts in the guise of public interest because of the allurements that the public interest litigation jurisprudence offers (e.g. inexpensive, quick response, and high impact). Of course, it is not always easy to differentiate “public” interest from “private” interest, but it is arguable that courts have not rigorously enforced the requirement of public interest litigations being aimed at espousing some public interest. Desai and Muralidhar confirm the perception that: “PIL is being misused by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes.” It is critical that courts do not allow “public” in PIL to be substituted by “private” or “publicity” by doing more vigilant gate-keeping.

(2) **Inefficient use of limited judicial resources**: If properly managed, the public interest litigation has the potential to contribute to an efficient disposal of people’s grievances. But considering that the number of per capita judges in India is much lower than many other countries and given that the Indian Supreme Court as well as the various High Courts are facing a huge backlog of cases, it is puzzling why the courts have not done enough to stop non-genuine public interest litigation cases. In fact, by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary might be violating the right to speedy trial of those who are waiting for the vindication of their private interests through conventional adversarial litigation. A related problem is that the courts are taking undue long time in finally disposing of even public interest litigation cases. This might render “many leading judgments merely of an academic value”. The fact that courts need years to settle cases might also suggest that probably courts were not the most appropriate forum to deal with the issues in hand as public interest litigation.
(3) **Judicial populism:** Judges are human beings, but it would be unfortunate if they admit PIL cases on account of raising an issue for they might become popular in the society.

Conversely, the desire to become people’s judges in a democracy should not hinder admitting PIL cases which involve an important public interest but are potentially unpopular. The fear of judicial populism is not merely academic is clear from the following observation of Dwivedi J. in *Kesavnanda Bharathi v State of Kerala*583 ‘‘The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people.’’

It is submitted that courts should refrain from perceiving themselves as crusaders constitutionally obliged to redress all failures of democracy. Neither they have this authority nor could they achieve this goal.

(4) **Symbolic justice:** Another major problem with the PIL project in India has been of public interest litigation cases often doing only symbolic justice. Two facets of this problem could be noted here. First, judiciary is often unable to ensure that its guidelines or directions in public interest litigation cases are complied with, for instance, regarding sexual harassment at workplace (Vishaka case) or the procedure of arrest by police (D.K. Basu case). No doubt, more empirical research is required to investigate the extent of compliance and the difference made by the Supreme Court’s guidelines. But it seems that the judicial

---

583 AIR 1971 SC 1461
intervention in these cases have made little progress in combating sexual harassment of women at workplace and in limiting police atrocities in matters of arrest and detention.

The second instance of symbolic justice is provided by the futility of over conversion of Directive Principle of State Policy’s into Fundamental Rights and thus making them justifiable. Not much is gained by recognising rights which cannot be enforced or fulfilled. It is arguable that creating rights which cannot be enforced devalues the very notion of rights as trump aptly notes that, “a judge may talk of right to life as including right to food, education, health, shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced.” So, the PIL project might dupe disadvantaged sections of society in believing that justice has been done to them, but without making a real difference to their situation.

(5) Disturbing the constitutional balance of power: Although the Indian Constitution does not follow any strict separation of powers, it still embodies the doctrine of checks and balances, which even the judiciary should respect. However, the judiciary on several occasions did not exercise self-restraint and moved on to legislate, settle policy questions, take over governance, or monitor executive agencies. M.P Jain cautions against such tendency: “Public interest litigation is a weapon which must be used with great care and circumspection; the courts need to keep in view that under the guise of redressing a public grievance, public interest litigation does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.”

Moreover, there has been a lack of consistency as well in that in some cases, the Supreme Court did not hesitate to intrude on policy questions but in other cases it hid behind the shield of policy questions. Just to illustrate, the
judiciary intervened to tackle sexual harassment as well as custodial torture and to regulate the adoption of children by foreigners, but it did not intervene to introduce a uniform civil code, to combat ragging in educational institutions, to determine the height of the Narmada dam and to provide a humane face to liberalisation-disinvestment polices. No clear or sound theoretical basis for such selective intervention is discernable from judicial decisions.

It is also suspected whether the judiciary has been (or would be) able to enhance the accountability of the other two wings of the government through public interest litigation. In fact, the reverse might be true: the judicial usurpation of executive and legislative functions might make these institutions more unaccountable, for they know that judiciary is always there to step in should they fail to act.

(6) Overuse-induced non-seriousness: Public Interest litigation should not be the first step in redressing all kinds of grievances even if they involve public interest. In order to remain effective, public interest litigation should not be allowed to become a routine affair which is not taken seriously by the Bench, the Bar, and most importantly by the masses: “The overuse of public interest litigation for every conceivable public interest might dilute the original commitment to use this remedy only for enforcing human rights of the victimized and the disadvantaged groups.” If civil society and disadvantaged groups lose faith in the efficacy of public interest litigation, that would announce a death knell for it.584