CHAPTER V

PIL RELATING TO CHILDREN

Children are the future assets of the nation. They must be allowed to enjoy their fundamental freedoms in the childhood days, since childhood comes only once in their lifetime. Unfortunately, they are trafficked and exploited in so many ways as they are highly vulnerable. Child labour hampers growth of the child, his health, physical and mental wellbeing. Child blossom and proper flowering is scuttled when they are employed in hazardous industry. It is here in the formation stage good education to internalize the values of equal citizenship and imbibing the moral values without exploitation is required. Due to poverty, illiteracy and indigence they are subject to child labour, prostitution, trafficking, sexual abuse, pornography. As a result, they are deprived of their childhood rights like education, health, nutrition, privacy and personality development. What about the rights of the children born out of rape, prostitution? Abandoned, destitute, street children, children working in circus and children in humanitarian emergencies and children with disability add to the vows of vulnerability. A girl child is more vulnerable for foeticide, infanticide, and sale or child marriage.

In spite of national and international statutory framework to end exploitation of children and promotion of child rights, the condition of the child is not improved particularly the poor, economically backward and other weaker sections of the society. Despite NGOs, voluntary organizations and child right activists contributing to the release and rehabilitation children from bondage, servitude and advocating to the child rights and for their wellbeing, their situation
in the country is not improved. Due diseases, hunger, starvation, poverty, malnutrition, poor sanitation the child mortality rate is high in the country. Where does the problem lie? Who is responsible for the pitiable plight? What about the rights of surrogate children, refugee children and children in the armed conflict? Is the Constitution of India a mute spectator? A plethora of laws viz., the Right of Children to Free and Compulsory Education Act, 2009, Protection of Children from Sexual Abuse Act, 2012, the Juvenile Justice Act, 2000 and the like proved to be non-starters and non-implementable due to various reasons. The judicial response for the release and rehabilitation of children from child labour and evolution of child right jurisprudence through PIL/SAL is significant and go a long way in consolidating juvenile justice. However, the directions of the judiciary in this regard are ignored. The researcher in the paper addresses the above problems and challenges faced by the innocent children and moot suggestions for improvement of their lot at the end.

In a civilised society, the importance of the child welfare cannot be over emphasised because the welfare of the entire community, its growth depends on the wellbeing and health of its children. Children need special protection because of their tender age, physique, mental immaturity and incapacity to look after themselves. There is a growing realisation that children must be brought up in an atmosphere of love and affection and under tender care and attention. Children are a human resource, invaluable but unfortunately vulnerable. They are great promises of tomorrow, the dawn of humanity and buds of social development.428 A society that is caring for child exhibits the signs of development and maturity.

Children’s right to education is not only a human right but it is instrumental for realising other human rights. Education is useful for personality development.

428 K. Ramaswamy, J. Gaurav Jain v. UOI, (1997) 8 SCC 114
It helps children in preparing useful citizens of the country. Unfortunately, child labour is a stumbling block of road to education. Though child labour is prohibited under Article 24 of the Constitution, children are still employed in hazardous\textsuperscript{429} industry. Tobacco manufacturing has indeed health hazards. Manufacturing process of matches and fireworks is hazardous giving rise to fatal accidents. Similarly, prevalence of child labour in carpet weaving industry.\textsuperscript{430} In the beginning, education for children upto 14 years of age was a directive principle of state policy. Thereafter, it was made a fundamental right. Subsequently, in order to realise the dream of free and compulsory education for all, the Right of Children to Free and Compulsory Education Act, 2009 was passed. Things have not improved even afterwards due to non-implementation of the Act in its letter and spirit.

The Indian Constitution also prohibits child trafficking and child labour. However, the innocent children are quite often fall to the prey of traffickers. In order to gain complete control of the child, traffickers often destroy physical and mental health of the children through persistent physical and emotional abuse. Victims experience severe trauma on a daily basis that devastates the healthy development of self-concept, self-worth, biological integrity and cognitive functioning. Children who grow up in constant environments of exploitation frequently exhibit anti-social behaviour, over-sexualised behaviour, self-harm, aggression, distrust of adults, dissociative disorders, substance, abuse, complex trauma and attention deficit disorders.\textsuperscript{431}

Traffickers in children may take advantage of the parent’s extreme poverty. Parents may sell children to traffickers. In order to pay off or gain income or they

\textsuperscript{429} M.C.Mehta v. State of T.N. AIR 1997 SC 699
\textsuperscript{430} Bandhu Mukti Morcha v. UOI (1997) 10 SCC 549
may be deceived concerning the prospects of training and a better life for their children. They may sell their children into labour, sex trafficking or illegal adoptions.432

Right to family life is one of the prominent human rights of the child as the child grows in its fold of intimacy and love. Adoption is an act of uprooting a child from the atmosphere of his or her natural family and transplanting his or her in adoptive family to facilitate continuation of the lineage of the latter. Traditional purpose of these artificial arrangements both in Hindu Law and Roman Law was to vest a child to a child less family or person. The adoption process legal or illegal, when abused can sometimes result in cases of trafficking of babies and pregnant women from developing countries to the west.

In Lakshmi Kant Pandey v. UOI433, the Court acting on a PIL dealt with the malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. Justice Bhagawati laid down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents. But in modern times, adoption serves as an instrument to help the orphans, destitute and abandoned children. The problem of inter-country adoption associated with various types of abuses has raised serious issues about adequacy of law and of its social justice components.434 There is more child-trafficking in the name of inter-country adoptions. Similarly, the Supreme Court in Vishal Jeet case435 in a response to a PIL directed the State governments and Union territories

432 See Art. 34 of the UN Convention on the Rights of the Child, 1989
433 AIR 1997 SC 3021
434 Lakshmi Kant Pandey v. UOI, AIR 1984 SC 469, involved allegation that Indian children of tender age were under the guise of adoption exposed to the long horrendous as journey to distant foreign countries at great risk to their lives and in the course of time becoming beggars or prostitutes.
435 Vishal Jeet v. UOI, (1990) 2 SCR 861
to take appropriate action to eradicate trafficking in children which often leads to prostitution.

In *Kisher v. Orissa*[^436^], a PIL highlighted the sale of children in Kalahandi district of Orissa on account of extreme poverty. The Supreme Court took measures to improve the conditions and also to prevent the trafficking in children. The sexual exploitation of blind girl student in a school at Berhampur, Orissa was brought to the notice of the Supreme Court through a PIL.[^437^] The Court also took cognisance of the problems of the children born to prostitutes and constituted a committee with lawyers and social activists to look into the matters in *Gaurav Jain*[^438^].

Circus is one of the ancient forms of indigenous entertainment in the world, with humans having a major role to play. However, the activities that are undertaken in these circuses deprive the artists, especially children, of their basic fundamental rights. Most of them are trafficked from some poverty stricken areas of Nepal as well as from backward districts of India. *Bachpan Bachao Andolan*[^439^] an International NGO has been able to liberate thousands of children with the help of the judiciary and the executive as well as through persuasion, social mobilisation and education. The petition is *Bachpan Bachao Andolan* was filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions. There are also instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children are deprived of basic human needs of food, water

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[^436^]: AIR1989SC 677
[^438^]: Gaurav Jain v. Union of India, AIR 1990 SC 292
and were trafficked into performing in circuses. The petitioner is engaged in a social movement for the emancipation of children in exploitative labour, bondage and servitude. The situation of children in circuses is in no different than animals.

The plight of the children (Child soldiers, refugee children and the displaced children) in complex humanitarian emergency is unimaginable. There are many national and international instruments dealing with the rights of the child soldiers, displaced children and refugee children. However, these instruments, declarations and U.N. General Assembly resolutions, Secretary General, ECOSOC and other regional organisations could not arrest the violations of the rights of the child during humanitarian emergencies. If a child whether a boy or girl is recruited as a soldier; it has a devastating effect on his development. He has a little opportunity for education and skill acquisition. Girls face particular threats including that of abduction, abuse and rape. The decision of the Indian Supreme Court in *Nandhini Sundar* would serve as a guideline to both state and non-state actors. Similarly, displaced children are vulnerable and face threats to life, liberty and trauma. Such impacts have long term effects on child’s outlook on life. The condition of refugee children is worse. The UNHCR issued guidelines on the protection of Refugee Children in 1998.

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440 Article 4(3) of the Second Additional Protocol to Geneva Convention, 1977 on ‘Protection of Victims of Non-International Armed Conflict provides that children below fifteen year shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. Article 38 of the Convention on the Rights of the Child, 1989 and Article 1 of the Optional Protocol to the Convention on the Rights of the Child, 1989 on the involvement of Children in Armed Conflict, 2000 also forbid recruitment of children in to the army.

441 Article 14 and 24 of Geneva Convention relative to the protection of civilian persons in Time of War, 1949 deal with protection of displaced children.

442 Article 77 of the First Additional Protocol to Geneva Convention, 1977


444 A number of studies indicate a large number of recruitment of child soldiers either by the State or non-state actors.

445 *Nandhini Sundar v. State of Chattisgarh*, (2011) 13 SCC 46, wherein the Supreme Court said that the State of Chattisgarh promoting activity a group called “Salwa Judum” to counter insurgency is involved in widespread violation of human rights as unconstitutional.
Torture of the girl child is the very negation of the human dignity and cuts at the root of the culture of human rights. Torture of girl child takes place in so many ways i.e torture by the state, during armed conflict, within family and within the community. Like in custodial torture, in the armed conflict children are especially defenceless against further acts of sexual violence in return for food, shelter, passage, rations and papers. A girl child faces intimate violence within the family. Incest, child sexual abuse is forbidden under protection of the Children from Sexual Abuse Act, 2012. Honour killings and female genital surgery are the tortious acts committed within community. Torture is dehumanising, intimidating and frightening for the girl child. It is to extinguish the individuality and identity of the person. Torture of the girl child is an international phenomenon and has been the concern of the international community. It is a universal and a global challenge. The private sanctuary of the family has become a violent prison and the State has failed in its responsibility to provide relief.

It is no longer a secret that thousands of children go ‘missing’ every year and that Delhi has an extraordinary high incidence of missing children National Crime Records Bureau data registers that a child goes missing every eight minutes. About 40% of these children remain missing. The maximum number of children reported missing was from areas where people from economically weaker section reside. They ran away from home as they were pushed to the edge of extreme

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446 UN Convention against torture and other Cruel Inhuman or degrading treatment or punishment, 1987; UDHR, 1948, ICCPR, 1966 and the UN Convention on the Rights of the Child (CRC), 1989 stootly Publication.
poverty or violence at home. A sizable number of those who go missing are trafficked for prostitution, slavery and beggary. There is a connection between missing children and organ trade\footnote{Usha Ramanathan, “Organ Trade, Missing Piece in Nithari Puzzle?”, THE HINDU dated on October, 29, 2014 p.11}. The tale of the Nithari murders is one of the unimaginable horror. The number of children who largely belonged to migrant worker’s families. The remains of the children were stashed in the drains running in front of and behind a house in the neighbourhood where they lived.

Both international and national instruments stoutly denounce in an unequivocal terms child trafficking. To fulfil its international commitment, the Commissions for Protection of Child Rights Act, 2005 was passed. In order to ensure protection of the rights of children, the Government has adopted the National Charter for Children, 2003. In view of various conventions and recommendations of the UN and the ILO adopted by India, it tries to follow the standards set by such conventions.

The judiciary with its innovative and inspiring judgements has been a bedrock of social justice. The concept of social justice would remain a myth, if protection could not be afforded to children. It is submitted that the judiciary took up cudgels against the exploitation of children and started giving protection to children in consonance with national and international commitments. In \textit{People’s Union for Democratic Rights v. UOI}\footnote{\text{(1982)} 3 SCC 235}, the Supreme Court held that the construction work is hazardous employment. Following the Constitutional dictates, the Supreme Court once again in \textit{Labourers, Salal Hydro Projects v. State of J.K}\footnote{\text{1983)} 2 SCC 181}, observed that construction work is a hazardous employment attracting
Article 24 of Indian Constitution. The Supreme Court in *Sheela Barse v. UOI*\(^{455}\), has declared that a child is national asset. A child cannot be treated as an inanimate object. A child cannot be treated like a property.

Article 15(3) of the Indian Constitution is empowered to make a special provisions for the Children. Children of the tender age cannot be subject to abuse and they should be given opportunities and facilities to develop in a healthy manner. As there was rise in crime and growing menace of sexual abuse of child, the Supreme Court in *Sakshi v. UOI*\(^{456}\), requested the Law Commission to suggest measures. Despite law,\(^{457}\) protecting children from sexual abuse, they are subjected to sexual assault, pornography and all other kind of sexual abuses. Incestuous behaviour with the children is child abuse\(^{458}\). Similarly, Juvenile Justice(Care and Protection) Act, 2000 was enacted for rationalizing the system of dealing with socially deviant children in keeping with the spirit of social justice and humanitarian law. The Act was passed promising to usher in a new era of juvenile justice. However, the desired goods are not achieved. The Juvenile offenders are taking advantage of the liberal provisions of the Act and loop holes.

Among various forms that are employed by the traffickers, to abduct children especially girl child, and to induce them into promiscuous activities, foreign adoptions is one of the important forms that has been chosen by the people with vested interests in the garb of providing foster parents to socially neglected children. Millions of Indian children were lured through illegal means in the name of foreign adoptions, in the absence of a specific law misusing the provisions of

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\(^{455}\) AIR 1986 Sc 1873  
\(^{456}\) 1999 (6) SCC 591  
\(^{457}\) Protection of Children from Sexual Abuse Act, 2012  
\(^{458}\) See *M.H. Kakkad v. Naval Dubey*, 1992 AIR SCW 1480
Guardians and Wards Act, 1890. In reality, those Children are converted as beggars, goondas or into the profession of flesh trade.

Forced labour often has a relationship with trafficking, although they do not have to occur together. Many of the threats to child well-being fall under the umbrella of child labour.\textsuperscript{459} Children working on the streets are among the most visible of child labours. The worst form of child labour is the use of the children in sexually related activities.

The object of the JJ Act is to bring the neglected juvenile into the main stream of national life. Further, the laudable purpose of the Act is not to punish and treat them as criminals but to rehabilitate them. Otherwise, they will be thrown into the vile of prostitution or for trafficking which would be deleterious to the child’s development.\textsuperscript{460}

Public Interest Litigation has got proper recognition in India, especially women and children are concerned. Sexual Exploitation of girl Student has got redressal by way of public interest litigation. In \textit{Bharatlal Kumar v. State of Orissa}\textsuperscript{461}, based on a petition filed by an advocate in West Bengal, sexual exploitation of girl student was brought to the notice of the Court by way of a letter with news item published in Amrit Bazaar Patrika. In the said case, the Court directed the concerned Chief Judicial Magistrate and to make enquiry, file a report for taking appropriate action. Though it was only a letter, supported by publication in news papers, in order to render proper justice, the Court gave suitable direction to the concerned Chief Judicial Magistrate. In that case, justice could be done by

\textsuperscript{460} Dr.Awasthi & Kataria, \textit{Law relating to Protection of Human Rights}, (2005).
\textsuperscript{461} AIR 1989 SC 1793
way of PIL to the affected girl, who had been in a disadvantaged position to approach the Court.

In *Gaurav Jain v. Union of India*\(^{462}\), direction was sought for making provision for running separate class for children of prostitutes, in order to consider the remedy sought for under PIL. The Supreme Court of India appointed a committee to go into the legal and practical aspects, in order to do justice.

Having considered the disadvantaged position of women and children, they are given special attention by the Courts in India, in case of Public Interest Litigation. A journalists, in the case in *Shella Barse v. State of Maharashtra*\(^{463}\), filed PIL, alleging custodial violence on women suspects in police lock-up, the Supreme Court besides laying down guidelines for the prosecution of female suspects in General, ruled that every under-trial has the right to legal aid under Article 21 of the Constitution. In the said decision, the Supreme Court has given the following guidelines for the benefit and protection of female suspects:

1. There should be separate lock ups for female suspects prisoners guided by female constables.

2. Interrogation of females should be carried out only in the presence of female police officers / constables.

3. Sessions Judge, preferably a lady judge nominated by him shall make surprise visits to police lock ups periodically to provide arrested persons an opportunity to air their grievances and ascertaining for himself / herself the conditions of police lock up and whether

\(^{462}\) 1989 (2) Scale 1126
\(^{463}\) Air 1983 SC 378
directions of Supreme Court and provisions of law are being properly observed.

In addition to the directions, in dealing with women suspects, some general guidelines applicable to both male and female prisoners were also given by the Supreme Court as follows:

a) Whenever a person is arrested and taken to police lock up, the police shall immediately inform the nearest legal aid office to provide legal assistance at state cost, if he is willing to accept such legal assistance.

b) As soon as a person is arrested, the police shall immediately obtain from him the name of the relative or friend whom he would like to inform.

c) The Magistrate before whom the arrested person is produced must inquire from the arrested person, if he has any complaint of torture or mal-treatment in police custody, and inform him that he has a right under Section 54 of the Code of Criminal Procedure, 1973, to be medically examined. It is necessary because very often the arrested person is not aware of his right.

The Supreme Court has issued various directions in case of female suspects in lock-ups, in order to prevent sexual harassment and abuse against women in lock-ups, by way of Public Interest Litigation.

Law was set in motion, by way of public interest litigation, based on a letter addressed by an advocate in West Bengal appending a news report of sexual exploitation of blind girl students in a school at Berhampur. The Court directed the
Chief Judicial Magistrate to make an enquiry and submit report. The Report indicated a solitary suspicious case of sexual exploitation.

In the said case of PIL, the Court held that on the basis of news report alone, the Court could not decide anything, however, to meet the ends of justice, appropriate directions, were found to be necessary, on the facts and circumstances, hence, suitable directions were issued. As Union of India was found to be a necessary party, notice was ordered to Union of India, in order to hear the Government, after entering their appearance 464.

As it was a public interest matter and also a barbaric violence against the school girls, without considering the legal formalities, the Supreme Court had treated the letter as a writ petition, notice was ordered to the Government and further, the concerned Chief Judicial Magistrate was directed to enquire and file his report. The Apex Court took serious note of it and passed appropriate orders to safeguard the rights of the affected girl students.

In Munna v. State of U.P 465, there were three writ petitioners, seeking relief in respect of certain juvenile under-trial prisoners lodged in Kanpur Central Jail, instead of children Home. It was alleged that those juvenile under-trials were being sexually exploited by hardened criminals. The Court observed:

“Juvenile delinquency is, by and large, a product of social and economic maladjustment. Even if it is found that these juveniles have committed any offences, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the jail. Moreover, the object of punishment being

465 AIR 1982 SC 806
reformation we fail to see what social objective can be gained by sending juveniles to jails where they would come into contact with hardened criminals and lose whatever sensitivity they may have to finer and nobler sentiments.”

In this case, the Court directed the police as to how to treat the children and the juveniles, if they are suspected of some crime. In case of children or juvenile, the prosecuting agency should follow all the mandatory provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000. In case of Public Interest Litigation, to meet the ends of justice, the Supreme Court and various High Courts have given proper interpretation of Article 21 of the Constitution, so as to ensure the safety of human life and liberty. In case of women and children suspected of crime, the prosecuting agency must be very cautious in safeguarding their rights.

It is the primary duty of any nation and the entire humanity to protect children, since they are the next generation of the country and the world to lead the human society. All the children must be brought up properly, in order to ensure a more civilized society maintaining utmost human right. All over child rights and child abuse are prevailing more and more, in spite various international conventions and various legislations enacted. In protecting the welfare of the children, in general is vested with the Government undertaking and non-Governmental organisations.

Legislature is playing an important role in enacting various legislations in favour of the children. Similarly judicial review, more particularly based on Public Interest Litigations relating to children is playing a major role in safeguarding the rights of the children.
Child abuse is the violation of the basic human rights relating to child, which affects social, psychological, economic and other factors in the human society. In India, acceptance of child right as primary inviolable rights has been recently understood\(^{466}\).

Childhood in our country is not homogeneous. It differs on the basis of social and economic status, physical and mental ability, geographical locations etc.

The violation of Child Rights has serious physical and psycho-social consequences, which adversely affect the health and overall well-being of a child. According to the WHO, “Child abuse or maltreatment constitutes all forms of physical and emotional ill-treatments, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”\(^{467}\)

Child abuse is normally presumed as physical abuse, psychological or emotional abuse, neglect and negligence of child etc., Apart from emotional, physical and economic abuse, such as child labour and ill treatment of child, sexual abuse is also paramount, which affects the children, who are victim in abuse. It is found that maximum amount of child abuse take place in child’s home, comparatively more amount occurring in the organisations, schools or communities they interact with. Various jurists have developed their own definitions about child abuse.

In India, traditionally, the responsibility for taking care and protecting children lies with the parents or the family. Further, while looking after their


children many of the parents do not realise that children are also individuals with their own rights. The Constitution guarantee Fundamental Rights of children is based on needs rather than their rights.

In *Childline India Foundation v. Allan John Waters*[^468] the Hon’ble Supreme Court has given elaborate guidelines to protect the rights of women and safeguard the children against crimes. In this case, it was brought to the notice of the Apex Court, unnatural offences against children in shelter homes, child sex tourism, offence committed under Section 377 IPC.

In fact, the petition was brought before the High Court of Bombay in the year 1986, complaining about the plight of children at various children homes in Maharashtra. High Court of Bombay appointed a committee in the name of Maharashtra State Monitoring Committee on Juvenile Justice, headed by Justice Hosbet Suresh, a retired Judge of the High Court of Bombay. The committee had received some complaints from the Child Rights Organisations like Saathi Online, Childline and CRY about the mismanagement of Anchorage Shelters, and on that basis, the Committee sought permission of the High Court to visit various Anchorage shelters. After visiting various Anchorage shelters including the one at Colaba and Cuffe parade, a report was submitted before the High Court of Bombay.

Based on the report, expressing unconfirmed report of sexual exploitation of children, on 17.10.2001, one M/s. Meher Pestonji telephoned Advocate Ms Maharukh Andenwala and informed her that some children residing in shelter homes were sexually exploited by those who were running these homes. After

[^468]: (2011) 6 SCC 261
receiving the said information, Ms. Maharukh Adenwala met those boys, who were allegedly sexually assaulted, at the residence of Ms. Meher Pestonji to ascertain the truth. After confirming the said fact, Ms. Maharukh Adenwala thought it proper to inform it to the Members of the Committee. After consulting the Committee, Ms. Maharukh Adenwala moved a Suo Motu Criminal Writ Petition No. 585 of 1985 before the High Court. On 19.10.2001, the High Court passed an order for the protection of the children at Anchorage Shelter Home.

The Child Line Foundation filed a complaint on 24.01.2001, with regard to the sexual and physical abuse of children at the Anchorage shelters with the Cuffe Parade Police station and while lodging the said complaint, Ms. Maharukh Adenwala was also present there. However, the concerned police did not take cognisance of the offences under the pretext that the matter was sub-judice, on the ground that the same was pending before the High Court. Hence, the Advocate Ms. Maharukh Adenwala recorded statements on some of the victims and informed the said fact to the members of the Committee.

On 28.10.2001, Dr. (Mrs) Kalindi Muzumdar and Dr. (Mrs) Asha Bajpai met the victims at the office of India centre for Human Rights and Law and endorsed that the statements previously recorded by Ms. Maharukh Adenwala were correctly recorded. After ascertaining the correctness of the statements by the Members of the Committee, the said acts were placed before the High court of Bombay and it was also brought to the notice of the High Court that the police authorities were not seriously pursuing the complaint. However, the High Court of Bombay, by its order, dated 07.11.2001, directed the police authority and the state of Maharashtra to take action, on the basis of the complaint lodged by Childline India Foundation. Based on this specific direction, Senior Inspector of Police,
Colaba Police Station was directed to investigate in detail the complaint lodged by Childline and to take such action according to law.

Subsequently, on 12.11.2001, Colaba Police station recorded the statement of one Sone Raju Thakur and the statement of one Sunil Kadam was recorded by the Police, ultimately registered a case at Colaba police station by treating the statement of Sonu Raju Thakur as formal First Information Report (FIR) in CR.No.312 of 2001 and started the investigation.

The case was registered against three accused, William D’Souza (A-1), Allan John Waters (A-2) and Duncan Alexander Grant (A-3). As the accused A2 and A3 had already left the country and therefore, an Interpol Red Corner Notice was issued on 05.04.2002 against A2 and A3 and accordingly, A2 was secured in U.S.A and subsequently, A3 surrendered before the Court in India. The concerned Metropolitan Magistrate committed the case to the Court of Sessions and after committal, it was initially assigned to the Fast Track Court at Sewree. All the said three accused pleaded not guilty and therefore, the case was tried by the Court of Sessions (FTC). The Sessions Judge, by Judgment, dated 18.03.2006, convicted William D’Souza (A1) for the offences punishable under Section 377 r/w Section 109 IPC, Sections 120-B and 323 IPC and under Section 23 of the Juvenile Justice Act. Allan John Waters (A-2) was convicted under Section 377 IPC, Section 120-B read with Section 377 IPC and Section 373 IPC. Duncan Alexander Grant (A-3) was convicted under Section 377 IPC, Section 373 read with Section 109 IPC, Section 372 IPC and Section 23 of the Juvenile Justice Act.

the High Court of Bombay and the State Government also preferred Criminal Appeal No.603 of 2006 before the High Court for enhancement of sentence of the accused persons. The High Court, by its common Judgment, dated 23.07.2008, allowed the criminal appeals filed by the accused / A-1 to A-3 and set aside the Judgment of conviction and sentence imposed by the Sessions Judge (FTC) and recorded acquittal in favour of the accused and also dismissed the appeal preferred by the State Government. Aggrieved by the said Judgment, Child Line India Foundation and Ms. Maharukh Adenwala filed criminal appeals.

In *Childline India Foundation v. Allan John Waters*\(^{469}\), the Hon’ble Apex Court has given various guidelines to prevent child abuse.

In the decision, the Supreme Court has ruled that children are the great gift to humanity and hence, sexual abuse of children is one of the most heinous crime, the same is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution has envisaged a happy and healthy childhood for children, which is free from abuse and exploitation.

In the aforesaid decision, the Apex Court referred the important Articles relating to children, such as Articles 15 (3), 21-A, 23 and 45.

Article 15(3) of the Constitution has provided the State with the power to make special provisions for women and children. Article 21-A of the Constitution mandates that every child in India shall be entitled to free and compulsory education up to the age of 14 years. The word “life” in the context of Article 21 of the Constitution has been found to include “education” and accordingly, this Court has implied that “right to education” is in fact a fundamental right. Article 23 of

\(^{469}\) (2011) 6 SCC 261
the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited because of their poverty. They are deprived of education, made to do all sorts of work injurious to their health and personality. Article 24 expressly provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. The Supreme Court has issued elaborate guidelines on this issue.

The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self-imposing direction towards securing the health and strength of workers, particularly, to see that the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength. Article 45 has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be up to the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. Virtually, Article 45 recognizes the importance of dignity and personality of the child and directs the State to provide free and compulsory education for the children up to the age of 14 years.
It was also pointed out that Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to, and disposition of, delinquent juveniles.

In *Vishal Jet v. Union of India*\(^{470}\), the Supreme Court issued several directions to the State and Central Government for eradicating child prostitution and for providing adequate and rehabilitative homes well manned by well qualified trained senior workers, psychiatrists and doctors. Our Constitution provides several measures to protect our children. I obligates both Central, State and Union Territories to protect them from the evils, provide free and good education and make them good citizens of this country. Several legislations and directions of the Supreme Court are there to safeguard their intent.

In the aforesaid decision, the Hon’ble Apex Court held as follows:

“Under these circumstances, the impugned judgment of the High Court acquitting all the accused in respect of charges levelled against them is set aside and we restore the conviction and sentence passed by the trial Judge. It is brought to our notice that A-1 has undergone imprisonment for 3 years and 1 month and A-2 was in custody for about 5 years and A-3 was in custody for about 3 years and 2 months. Inasmuch as the trial court has imposed maximum sentence of 3 years of William D’Souza (A-1) and he had already undergone 3 years and 1 month’s imprisonment, while confirming his conviction imposed by the trial court,

\(^{470}\) (1990) 3 SCC 318 : 1990 SCC (Cri) 482
we clarify that there is no need for him to undergo further imprisonment. On the other hand, inasmuch as Allan John Waters (A-2) and Duncan Alexander Grant (A-3) were awarded 6 years’ imprisonment under Section 377 IPC, while confirming their conviction, we direct them to serve the remaining period of sentence. “

In *Janata Dal v. H.S. Chowdhary*\(^\text{471}\), the Supreme Court has given the meaning for Public Interest Litigation that a legal action intended in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or Liabilities are affected.

In *Bandhua Mukti Morcha v. Union of India and others*\(^\text{472}\), the Apex Court of India has held as follows:

“Public interest litigation is not in nature of adverse litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice, which is the signature tune of our Constitution. “

REAL AND BONAFIDE INTEREST

\(^{471}\) (1992) 4 SCC 305
\(^{472}\) AIR 1984 SC 802
In order to maintain Public Interest Litigation, a person or persons or organizations, should have bonafide intention in seeking justice to others, who have no access to justice. However, it cannot be a private interest litigation, political oriented litigation or publicity oriented litigation in the guise of Public Interest Litigation.

In *Ashok Kumar Pandey v. State of West Bengal*[^73^], it was held that publicity oriented PIL’s filed by any busy body should be dismissed at the threshold with exemplary cost. The judiciary has to be extremely careful to see whether it is a real Public Interest Litigation, as it is a weapon, which has to be used with great care and circumspection. In the decision, it was observed by the Apex Court of India that behind the beautiful veil of public interest, an ugly private malice, vested interest or publicity oriented litigation should not lurking. Public Interest Litigation is no doubt an effective weapon, to ventilate the grievance of the marginalized section of the society and to render social justice to deserving citizens and other, whose right has been violated. Hence, unscrupulous persons should not be allowed to commit mischief, by way of filing PIL. Public Interest Litigation should be aimed at redressal of genuine public wrong or public injury and it should not be publicity oriented or founded on any personal vendetta or for political gain.

**THE VOICE OF THE VOICELESS, ESPECIALLY WOMEN AND CHILDREN**

The noble cause of PIL is to raise the voice for the voiceless, who have no direct access to justice through Court of law. In fact, PIL has got its origin and the concept was innovated only to safeguard the rights of the persons, who are in a disadvantaged position.

[^73^]: AIR 2004 SC 280
In *Hussainara Khatoon (V) v. State of Bihar* 474, it was held by a Three Judge Bench of the Apex Court, delivered by Mr. Justice Bhagwati, which reads as follows:

“It is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so require. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and it is hoped that every State Government would try to avoid such a possible eventuality.

In the aforesaid case, the Supreme Court, came down heavily and observed that it was highly regrettable that under-trial prisoners had been kept in jail without trial for a period longer than the maximum term sentence, as per the penal provisions, for which they were charged. It was brought light by way of PIL raised by an Advocate. The Judges found that there was no moral or ethical justification for the State to have detained the unfortunate persons for such unreasonably long periods of time without trial. The Judgment further reads as follows:

“There are 50 under-trial prisoners whose names and particulars are set out in this chart and we direct that they

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474 (1980) 1 SCC 108
should be released forthwith as their continued detention is clearly illegal and in violation of their fundamental right under Article 21 of the Constitution.”

It was further directed by the Supreme Court to the authorities to produce list of under-trial prisoners, showing the details of charges under which case were pending against them and also the period of their detention, as under-trial prisoners. It was also directed that lunatics and persons of unsound mind should not be kept in the ordinary jail along with other under-trials and it was made clear that the State is bound to provide free legal aid to enable the accused to exercise their right and the Magistrates were directed to ensure whether the accused are provided with proper free legal aid. All the Magistrates were directed to follow the guidelines laid down by the Supreme Court in the Hussainara Khatoon’s case - I. It was also made clear by the Apex Court that every Magistrate should apply his mind before passing the order of remand under 167 (2) of Criminal Procedure Code, 1973, in order to avoid mechanical remand of the under-trial prisoners, on the pre-trial detention and also emphasised the duty of the Government towards the right of under trial prisoners, which included male and female prisoners.

In the landmark Judgment of Hussainara Khatoon’s case, the Supreme Court highlighted the Fundamental Rights enshrined under Articles 21, 14 and the importance of free legal aid under Article 39A at the expense of State to be given to the indigent accused. It was further held that it is the constitutional mandate, obligating all State Governments to make adequate provision for the legal aid to the poor accused, in order to safeguard their rights, if not provided already. It was also pointed out by the Apex Court that if free legal services are not provided to
such accused the trial may run the risk of violating Article 21 of the Constitution and also Section 304 of the Code of Criminal Procedure, 1973.

In this regard, Mr. Justice Bhagwati has observed in *S.P. Gupta and others v. Union of India and others*\(^{475}\) thus:

“It may therefore now be taken as well established that where 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 authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.”

In *Ashok Kumar Pandey v. State of West Bengal*\(^{476}\) the Hon’ble Supreme Court has held that Public Interest Litigation is a weapon, which has to be used

\(^{475}\) AIR 1982 SC 149
\(^{476}\) AIR 2004 SC 280
with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of representing a public grievance, it does not encourage upon the secure reserved to the Constitution to the Executive and the Legislators.

In *A.S.Mittal v. State of U.P.*[^477^], in the case popularly known as eye-blinding case, the Apex Court issued suitable directions and also awarded compensation, while disposing of writ petition.

**AWARD OF INTERIM COMPENSATION**

In *Ayesha Abdulla Kutty v. State of Maharashtra*[^478^], it was held that on certain special circumstances, to meet the ends of justice, in a case relating to Public Interest Litigation, payment of interim compensation can be ordered.

**PIL relating to mental hospital**

In *B.R.Kapoor v. Union of India*[^479^], it was held where mismanagement of mental hospital was complained, seeking an order to appoint committee of experts to visit the hospital, considering the nature of the writ petition, suitable directions were issued by the Apex Court.

Letter addressed to the Supreme Court about sexual exploitation of girl student:

Where an Advocate from Nadia in West Bengal had brought to the notice of the Court by way of a letter with news items published in Amrit Bazar Patrika

[^477^]: AIR 1989 SC 1570 : 1989 (1) Scale 1535
[^478^]: 1989 (1) Scale 598
[^479^]: (1989) 3 SCC 387 : AIR 1990 SC 752
relating to sexual exploitation of girl student, in *Pratul Kumar Sinha v. State of Orissa*\(^{480}\), the Apex Court has directed the Chief Judicial Magistrate to make an enquiry.

**Separate schools for children of prostitutes**

Where a direction was sought for making provision for running separate schools for children of prostitutes in *Gaurav Jain v. Union of India*\(^{481}\), the Apex Court had appointed a committee.

Various decisions rendered by the Supreme Court of India and the High Courts would show that so far as Public Interest Litigation are concerned, the object of the Court was in rendering justice, without giving much importance to procedural laws. Considering the legal principle that Law is only the means and the justice is the end, Public Interest Litigations, especially cases relating to women and children are dealt with, in order to secure social justice.

**ABUSE OF PIL TO BE PREVENTED**

In *Ashok Kumar Pandey’s case*, it was observed by the Apex Court that Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. Hence, any person having bona fide intention and sufficient interest in the case of public interest litigation alone will have *locus standi* to approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions. Hence, for personal gain or private profit or with political motive or on any oblique consideration, no one shall be permitted to use the weapon of PIL.

\(^{480}\) AIR 1989 SC 1783 : 1989 (1) Scale 1277  
\(^{481}\) 1989 (2) Scale 1126 : 1991 (1) Scale 963
PIL IS DIFFERENT FROM ADVERSARY LITIGATION

Public Interest Litigation is not adversary litigation. In *Bandhua Mukti Morcha v. Union of India and others*, it was held by the Supreme Court that public interest litigation is not in the nature of adversary litigation. It is a challenge, whereby an opportunity is given to the Government and its officers to make the basic human rights meaningful to the deprived, vulnerable sections of the people below the poverty line and the common man and to assure them social and economic justice.

In the case of *Workers of M/s. Rohtas Ltd., v. M/s. Rohtas Industries Ltd.*, in order to provide relief to the workers, Court had issued a direction to the State of Bihar to appoint an authorised officer from the Senior IAS cadre with appropriate commercial background to be the Rehabilitation Administrator.

After the assassination of the former Prime Minister, Smt. Indira Gandhi, there was riots against Singh people, against which public interest litigation was filed. On the circumstances, in *Darshan Singh v. Delhi Administration*, for the victims of 1984 riots, under the bye-laws of Municipal Corporation of Delhi, the Supreme Court directed payment of compensation to the victims of the riot.

Similarly in respect of Bhopal gas tragedy, in *Charanlal Sahoo v. Union of India*, suitable directions were issued. In *Union Carbide Corporation v. Union*

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482 AIR 1984 SC 802  
483 1989 (2) Scale 873  
484 1990 (2) Scale 611  
485 1992 (2) Scale 498
of India\textsuperscript{486}, while dealing with Bhopal gas tragedy, various directions were issued, in order to safeguard the rights of the affected people. There are number of cases in the nature of PIL, where proper remedy was given to the victims, on account of the fact that the victims were not capable of approaching the Court, directly to raise their legal grievance.

In case of PIL, judicial activism has played a significant role, however, it cannot be said that by way of PIL, judiciary has encroached the power relating to the domain of the Executive and the Legislator. In fact, PIL is not the expansion of the powers of the judiciary, though PIL has developed by way of the broader interpretation of the Supreme Court in rendering justice, as the same is towards rendering social justice and providing judicial redressal to the marginalized section of people. It has achieved its objectives in safeguarding the interest of the poor, marginalized sections of people, especially women and children in various dimensions in this country.

In \textit{Gurdial Kaur v. Mangal Singh}\textsuperscript{487}, the Punjab High Court held that Article 44 cannot be enforced under the guise of fundamental rights. In \textit{State of Bombay v. Narasu Appa Mali}\textsuperscript{488}, Mr. Justice Gajendragadkar, held that Article 44 by necessary implication recognised the existence of different codes applicable to Hindus and Muslims in matters of personal law and permits their continuance, unless the State succeeds in its endeavour to secure for all citizens a uniform civil code. However, the Supreme Court took a view in \textit{Mohd. Ahmed Khan v. Shah Bano Begum}\textsuperscript{489}, pertaining to the liability of a Muslim husband to maintain his

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\textsuperscript{486} 1995 Supp. (4) SCC 59
\textsuperscript{487} AIR 1968 Punj 396
\textsuperscript{488} AIR 1952 Bom 85
\textsuperscript{489} (1985) 2 SCC 556 : 1985 SCC (Cri) 245
divorced wife, beyond the period of *iddat*, if the wife is not able to maintain herself
to provide maintenance under Section 125 of the Code of Criminal Procedure.

The Supreme Court in *Shah Bano’s* case held that Section 125 Cr.P.C
imposed such obligation on all the husbands, which is secular in character and is
applicable to all religions and it was further, held that providing maintenance under
Section 125 Cr.P.C is applicable to all Indians, generally and overrides the
personal law, if there is a conflict between the two. In this regard, the Chief Justice
Y.V.Chandrachud for the Bench made it clear as follows :

> It is also a matter of regret that Article 44 of our Constitution
> has remained a dead letter…. There is no evidence of any
> official activity for framing a common civil code for the
> country. A belief seems to have gained ground that it is for
> the Muslim community to take a lead in the matter of reforms
> of their personal law. A common Civil Code will help the
> cause of national integration by removing disparate loyalties
> to laws which have conflicting ideologies. No community is
> likely to bell the cat by making gratuitous concessions on this
> issue. It is the State which is charged with the duty of
> securing a uniform civil code for the citizens of the country
> and, unquestionably, it has the legislative competence to do
> so.

> A counsel in the case whispered, somewhat audibly,
> that legislative competence is one thing, the political courage
> to use that competence is quite another. We understand the
difficulties involved in bringing persons of different faiths
and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.  

Subsequently, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted and the constitutionality of the Act was challenged in *Danial Latifi v. Union of India*. The petitioners therein inter alia contended that provisions under Section 125 Cr.P.C reflected the moral stance of the law and ought not to have been entangled with religion and religion-based personal laws and that the Act is violative of Articles 14 and 21 of the Constitution. However, the Supreme Court holding the validity of the Act observed that if on a rule of construction a given statute will become ultra vires or “unconstitutional” and therefore, void, whereas on another construction which is permissible, the statute remains effective and operative, the court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws.

However, it is a settled proposition of law, as decided by the Supreme Court that irrespective of the religion, husband of divorced wife is liable to pay maintenance, if she is not able to maintain herself.

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490 Ibid, SCC 572-573, para 32
491 (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266
FUNDAMENTAL DUTIES

As per Article 51-A (e), it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women\(^{492}\).

Therefore, prior to Shah Bano’s case, the trend was that the muslim men need not pay maintenance, after the period of *iddat* and he was liable to pay only the mahar amount. However, the Supreme Court made it clear in favour of divorced women for getting maintenance from their husband, irrespective of their religion, as per Section 125 of the Code of Criminal Procedure.

In *Bandhua Mukti Morcha v. Union of India*\(^{493}\), Three Judge Bench of the Supreme Court held that interpretation of Article 32 should be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this article has been enacted and its interpretation must receive light from the Preamble, the Fundamental Rights and the Directive Principles. While delivering the Judgment, Mr.Justice P.N.Bhagwati, observed that there is no litigation in regard to the kind of proceeding envisaged in Article 32 (1), except that the proceeding must be ‘appropriate’ not in terms of any particular form but appropriate with reference to the purpose of the proceeding viz., enforcement of fundamental rights.

When there is violation of fundamental right, any one, other than one whose fundamental right is violated can move the Supreme Court under Article 32 for enforcement of such fundamental right, though ordinarily the Court would not in

\(^{492}\) Inserted under part IV-A, in view of 42\(^{nd}\) Amendment, Act, 1976

\(^{493}\) (1984) 3 SCC 161
exercise of its discretion, intervene at the instance of a meddlesome interloper or busybody and would ordinarily insist that only a person whose fundamental right is violated should be allowed to aktivise the Court.

It was further held that the right to live with human dignity, free from exploitation enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. At least, it must include protection of the health and strength of workers, men and women and the children of tender age against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom, dignity, educational facilities just and humane conditions of work and maternity relief.

Referring the cases, People’s Union for Democratic Rights v. Union of India\(^ {494}\), Francis Coralie Mullin v. Administrator, Union Territory of Delhi\(^ {495}\), the Apex Court ruled that the minimum requirements was existing in order to with human dignity and neither the Central not any State Government has the right to take away action, which will deprive the person of the enjoyment of the aforesaid basic essentials. Where legislation is already enacted by the State providing these basic requirements to the persons, particularly belonging to the weaker section of the community and thus investing their right to live with basic human dignity, the State can certainly be obliged to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such legislation would amount to denial of protection under Article 21, more so in the context of Article 256.

\(^{494}\) (1982) 3 SCC 235 : 1982 SCC (L&S) 275
\(^{495}\) (1981) 1 SCC 608 : 1981 SCC (Cri) 212
Article 256 makes it clear on the obligation of State sand the Union, which reads as follows:

“The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.”

In the aforesaid decision, the Apex Court directed the State of Haryana to ensure that the mine lessees of contractors, to whom it is giving its mines for stone quarrying operations, observe various social welfare and labour laws enacted for the benefit of the workmen, which includes women labourers. It was made clear in the decision that the Constitutional obligation which could be enforced against Centre and the State of Haryana by a writ petition under Article 32.

While concurring the view Mr. Justice Pathak, observed that Article 32 does not specifically indicate who can move the Court. In the absence of a confining provision in that respect it is plain that a petitioner may be anyone in whom the law recognises a standing to maintain an action of such nature.

Similarly, Mr. Justice A.N. Sen rendered a concurrent view, holding that any person is wrongfully and illegally deprived of his liberty, it is open to anybody who is interested in the person to move the Court under Article 32 for his release, who was deprived of his liberty to approach the Court, by way of such illegal or wrongful detention.
In *Shri Sachidanand Pandey v. The State of W.B*\(^{496}\), Mr. Justice O. Chinnappa Reddy, while deciding the scope of Article 226 in respect of public interest litigation, that such litigation must inspire confidence in Court and among public and that the necessity to lay down guidelines for entertaining such petitions was also emphasized by the Supreme Court.

In *M.C. Mehta v. Union of India*\(^{497}\), rendered by Five Judge Bench of the Apex Court, ruled that the Supreme Court under Article 32 (1) is free to device any procedure appropriate for the particular purpose of the proceeding and that Article 32 lays constitutional obligation of Supreme Court to protect the fundamental rights of the people and for that purpose, the Supreme Court has all incidental and ancillary powers, including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

Where there is violation of a fundamental or other legal right of a person or class of persons, who by reason of poverty or disability or socially or economically disadvantages position cannot approach a court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court. In this regard, the Constitutional Bench has held that even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. There is no

\(^{496}\) AIR 1987 SC 1109 (1)  
\(^{497}\) (1987) 1 SCC 395
difficulty in entertaining such letters as the Court now has a PIL Cell and it is only after scrutiny by the staff members attached to this Cell that the letters are placed before the Chief Justice and under his direction, they are listed before the Court.

In the landmark decision, the Supreme Court categorically held that the rule laid down in Rylands v. Fletcher\(^{498}\) is not applicable in India and the Supreme Court of India is not bound by the American exposition of Constitutional law. The view of the Apex Court is that the provisions of American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution, while some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles, while applying them to the provisions of our Constitution is not to be favoured because the social conditions in our country are different.

In so far as the power of the Supreme Court under Article 32 to cover relevant materials bearing on the issues arising in case of PIL. In the view point of the Supreme Court, it may be called social action litigation for the sake of convenience and to appoint Commissioners for the purpose of gathering relevant material, the view expressed by Bhagwati, J, as he then was in Bandua Mukti Morcha’s case\(^{499}\) are endorsed and fully approved by the Constitutional Bench of Five Judges in M.C.Mehta’s case\(^{500}\).

In Janata Dal v. H.S.Chowdhary\(^{501}\), the Supreme Court of India held that public interest litigation is similar to that of action popularis. Mr.Justice

\(^{498}\) (1868) LR 3 HL 330  
\(^{499}\) (1984) 3 SCC 161  
\(^{500}\) (1987) 1 SCC 395  
\(^{501}\) AIR 1993 SCC 892 (1)
S. Ratnavel Pandian, delivered the Judgment, wherein it is opined that lexically the expression “Public Interest Litigation” (PIL) means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

As per the ruling, the requirement of *locus standi* of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private of public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold. In contract, the strict rule of *locus standi* applicable to private litigation is relaxed in public interest litigation (PIL) and a broad rule is evolved which gives the right of *locus standi* to any member of the public acting bonafide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper.

As per this decision, it has been made clear that “*locus standi*” or “standing” is required even to maintain public interest litigation. However, *locus standi* required is not similar to that of the legal right or legal injury required for maintaining a suit of private nature. In fact, the *locus standi* for maintaining public interest litigation is the bonafide interest of the person, who approached the Court for the relief on behalf of some other person, whose fundamental right has been infringed or the jurisdiction of public interest litigation is invoked for the public cause with the bonafide intention of any activists.
CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 1 deals with human dignity. As per Article 1 of the Charter, human dignity is inviolable and it must be respected and protected. Article 2 of the Charter of fundamental rights of the European Union, speaks on the right to life, accordingly, as per Article 2 (1) everyone has the right to life and Article 5 prohibits that no one shall be held in slavery or servitude, which includes engaging forced or compulsory labour. All these rights declared in the charter of the European Union is applicable to both men and women.

EQUALITY BETWEEN MEN AND WOMEN

Article 23 of the Charter of the fundamental rights of the European Union emphasize equality between men and women, that must be ensured in all areas including employment, work and pay. It is also made clear under the Article that principle of equality shall not prevent the maintenance of adoption of measures providing for specific advantages in favour of the under-represented sex. Though Article 23 has not specifically stated the word “women”, it is similar to that of Article 15, especially in respect of providing special concession to women and children under Article 15 (3) of the Constitution of India.

Article 24 of the Charter of fundamental rights of the European Union deals with the rights of the child, which reads as follows:
1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interest must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interest.

RIGHTS OF PERSON WHO HAVE NO ACCESS

Originally, Public Interest Litigation was aimed at combating inhuman prison conditions, as decided by the Supreme Court in Sunil Batra v. Delhi Administration\textsuperscript{502}. It was held that the practise of bonded labour is against fundamental rights and also human rights, accordingly appropriate direction was given in People’s Union of Democratic Rights v. Union of India\textsuperscript{503}, to eradicate the system of bonded labour.

It was further extended in M.H.Hoskot v. State of Maharashtra\textsuperscript{504}, that right to speedy trial is also a fundamental right, guaranteed under Article 21 of the Constitution, which is subject to Public Interest Litigation. Similarly, Right to legal

\textsuperscript{502} AIR 1987 SC 1675
\textsuperscript{503} AIR 1982 SC 1473
\textsuperscript{504} AIR 1978 SC 548
aid\textsuperscript{505}, the right to livelihood\textsuperscript{506}, a right against pollution\textsuperscript{507}, a right to be protected from industrial hazards\textsuperscript{508}, the right to human dignity\textsuperscript{509}, right to basic needs\textsuperscript{510} etc.

Considering the nature and scope of Public Interest Litigation, Mr. Justice P.N.Bhagwati in \textit{S.P.Gupta v. Union of India}\textsuperscript{511}, observed thus:

“where 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 authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction.”

\textit{In Re ICICI Bank Ltd.}\textsuperscript{512}, it was held that a litigation cannot be construed as PIL, merely because question of law of general public importance arose in that case. PIL is where interest, which the court pronounces upon, is itself in a representative capacity in public interest.

\textsuperscript{505} M.H.Hoskot v. Supra Note 14; Sukdas v Union Territory of Arunachal Pradesh (1986) 4 SCC 401; Sheela Barse v Union of India, AIR 1983 SC 378
\textsuperscript{506} Olga Tellis v Bombay Municipal Corporation, (1985) 3 SCC 545
\textsuperscript{507} Rural Litigation and Entitlement, Kendra, Dehradun v. State of U.P., AIR 1985 SC 652
\textsuperscript{508} M.C.Mehta v Union of India, (1986) 2 SCC 176; AIR 1987 SC 965
\textsuperscript{510} Kishan Patnaik v. State of Orissa, (1989) 1 SCALE 32 –Kalahandi Food Petitions
\textsuperscript{511} AIR 1982 SC 149; (1982) 2 SCR 365
\textsuperscript{512} AIR 2006 All 239 : 2006 (3) ALJ 412
PREVENTING FEMALE FEOTICIDE

In *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India*\(^{513}\), the Supreme Court gave various directions to implement Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 by the Centre and State Governments in its letter and spirit, especially on Sections 3, 7, 9 (1), 16, 17(5), 6 (d), 22, 28, 29, 30 of Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and the rules there under. The Supreme Court found that the developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence, foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall sex ratio in various States where female infanticide is prevailing without any hindrance.

In order to prevent girl child being aborted, Parliament in its wisdom enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The object of the Act is clearly expressed in the Preamble to the Act, that is to prevent misuse of such technique for the purpose of parental sex determination leading to female foeticide and for matters connected there with or incidental thereto. The said Act came into force with effect from 01.01.1996.

Dealing with a writ petition under Article 32, the Apex Court gave the following directions to the Central Government:

“1. The Central Government is directed to create public awareness against the practice of pre-natal determination of sex

\(^{513}\) (2001) 5 SCC 577
and female foeticide through appropriate releases / programmes in the electronic media. This shall also be done by Central Supervisory Board ("CSB" for short) as provided under Section 16(iii) of the PNDT Act.

2. The Central Government is directed to implement with all vigour and zeal the PNDT Act and the Rules framed in 1996. Rule 15 provides that the intervening period between two meetings of the Advisory Committees constituted under sub-section (5) of Section 17 of the PNDT Act to advise the appropriate authority shall not exceed 60 days. It would be seen that this Rule is strictly adhered to.”

Similarly, directions were given to the Central Supervisory Board, which reads as follows:

“1. Meetings of the CSB will be held at least once in six months. [re. proviso to Section 9(1)]. The constitution of the CSB is provided under Section 7. It empowers the Central Government to appoint ten members under Section 7(2)(e) which includes eminent medical practitioners including eminent social scientists and representatives of women welfare organizations. We hope that this power will be exercised so as to include those persons who can genuinely spare some time for implementation of the Act.

2. CSB shall review and monitor the implementation of the Act. [Re. Section 16(ii)].
3. CSB shall issue directions to all State/UT. Appropriate Authorities to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:

(i) survey of bodies specified in section 3 of the Act.

(ii) registration of bodies specified in section 3 of the Act.

(iii) action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

(iv) complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) number and nature of awareness campaigns conducted and results flowing therefrom.

4. CSB shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in implementation of the Act and to make recommendations to the Central Government. [re. Section 16]

5. CSB shall lay down a code of conduct under section 16(iv) of the Act to be observed by persons working in bodies specified therein and to ensure its publication so that public at large can know about it.
6. CSB will require medical professional bodies/associations to create awareness against the practice of pre-natal determination of sex and female foeticide and to ensure implementation of the Act.”

Directions given to State Governments / Union Territories:

“1. All State Governments/UT Administrations are directed to appoint by notification, fully empowered Appropriate Authorities at district and sub-district levels and also Advisory Committees to aid and advise the Appropriate Authority in discharge of its functions [re. Section 17(5)]. For the Advisory Committee also, it is hoped that members of the said Committee as provided under section 17(6)(d) should be such persons who can devote some time for the work assigned to them.

2. All State Governments/UT Administrations are directed to publish a list of the Appropriate Authorities in the print and electronic media in its respective State/UT.

3. All State Governments/UT Administrations are directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisement in the print and electronic media by hoarding and other appropriate means.

4. All State Governments/UT Administrations are directed to ensure that all State/UT appropriate Authorities furnish quarterly returns to the CSB giving a report on the implementation and
working of the Act. These returns should inter alia contain specific information about:

(i) survey of bodies specified in section 3 of the Act.

(ii) registration of bodies specified in section 3 of the Act.

(iii) action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

(iv) complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) number and nature of awareness campaigns conducted and results flowing therefrom.”

Directions to appropriate authorities:

“1. Appropriate Authorities are directed to take prompt action against any person or body who issues or causes to be issued any advertisement in violation of section 22 of the Act.

2. Appropriate Authorities are directed to take prompt action against all bodies specified in section 3 of the Act as also against persons who are operating without a valid certificate of registration under the Act.

3. All State/UT Appropriate Authorities are directed to furnish quarterly returns to the CSB giving a report on the
implementation and working of the Act. These returns should inter alia contain specific information about: -

(i) survey of bodies specified in section 3 of the Act.

(ii) registration of bodies specified in section 3 of the Act including bodies using ultrasound machines.

(iii) action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

(iv) complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) number and nature of awareness campaigns conducted and results flowing therefrom.”

In the subsequent decision in Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India514, in order to prevent abuse of Pre-natal Diagnostic Techniques and the female foeticide, the Supreme Court issued various directions to the Government. Mr. Justice M.B. Shah has observed in the decision as follows:

“…It is an admitted fact that in the Indian society, discrimination against the girl child still prevails, may be because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mindset or also because of insufficient education and / or tradition of women being confined

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to household activities. Sex selection / sex determination further adds to this adversity. It is also known that a number of persons condemns discrimination against women in all its forms, and agree to pursue by appropriate means, a policy of eliminating discrimination against women, still however, we are not in a position to change the mental set-up which favours a male child against a female. Advanced technology is increasingly used for removal of foetus (may or may not be seen as commission of murder) but it certainly affects the sex ratio. The misuse of modern science and technology by preventing the birth of a girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.”

From the aforesaid discussion, it is concluded that the judiciary by using the weapon of PIL/SAL has greatly contributed for the enforcement and protection of rights of children in general and children of the weaker sections, vulnerable communities and voiceless. Unfortunately, the directions/guidelines of the court are given scant attention by the executive.